

Draft Scoping Report

National Environmental Policy Act Review Process on Endangered Species Act “Take” Coverage For the Washington Forest Practices Regulatory Program



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**U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service**

**U.S. Department of the Interior
Fish and Wildlife Service**

Preface

Scoping is defined, in the Council on Environmental Quality Regulations for implementing the National Environmental Policy Act, as "...an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action" (40 CFR 1501.7, 1992). This process begins early and continues almost until the publication of the Draft Environmental Impact Statement (DEIS). In order to make this report available for public and internal use prior to the DEIS stage, it is being printed as a draft on May 28, 2003; Section 3.0 (Issues to be Analyzed in the EIS) and Section 4.0 (Alternatives to be Considered in the EIS) are blank in this early version and will be completed at the conclusion of internal scoping and prior to the major analyses that will be conducted for the DEIS.

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1.0 Introduction

This scoping report provides a summary of scoping activities and public/internal scoping results relative to the National Environmental Policy Act (NEPA) review process on Endangered Species Act (ESA) “take” coverage for the Washington State Forest Practices regulatory program. The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS), hereafter collectively referred to as the Services, are leading this environmental review because of anticipated applications from the State of Washington (State) for take authorization or a take limit under the ESA. Both Services have listed threatened and endangered species in the State that are likely to be affected by this action. Therefore, the Services have sought public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and potential impacts of any alternatives.

This scoping report summarizes the issues to be analyzed in an Environmental Impact Statement (EIS), based on a synthesis of scoping input, and describes the alternatives suggested for analysis during scoping. This first section of the scoping report also provides background information on the project and specifically states the objectives of the report.

1.1 Background

Endangered Species Act

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The Services expect to take action on an ESA Section 10(a)(1)(B) permit application and/or a 4(d) Limit submittal expected from the State.

Section 9 of the ESA and implementing regulations prohibit the “taking” of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). Harm is defined by the FWS to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50CFR17.3). The NMFS definition of harm includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727, November 8, 1999).

Section 4(d) of the ESA allows for the Services to identify specific actions that may not be subjected to take prohibitions in Section 9(a)(1) for threatened species that are determined to be consistent with the conservation needs of threatened species. Also, Section 10(a)(1)(B) of the ESA provides a mechanism by which both Services may permit take through the issuance of an Incidental Take Permit (ITP). An ITP may be issued for take that could occur incidental to

otherwise lawful activities, provided all permit issuance criteria are met, including the requirement that permit issuance would not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The applicant for an ITP must prepare and submit to the Services for approval, a Habitat Conservation Plan (HCP) containing strategies for minimizing and mitigating the impacts of take associated with the proposed activities to the maximum extent practicable. An HCP and associated ITP could cover the threatened bull trout and salmon, plus any endangered and unlisted species (as described in the Forests and Fish Report) that might be affected by the Washington State Forest Practices Rules. In addition, the “No Surprises” rule assures that the Services will not require the commitment of any additional resources for HCPs that are being properly implemented throughout the term of the HCP and ITP. It is important to note that Section 10 is the only ESA mechanism by which take authorization can be granted to non-Federal landowners for incidental take of endangered species.

On July 10, 2000, NMFS promulgated and published an ESA Section 4(d) rule for threatened salmon and steelhead (65 FR 42422). In addition to establishing take prohibitions, the rule provides that certain specified activities or conservation plans may qualify for a limit from the rule’s take prohibitions provided that such activities or programs qualify for one of 13 categories known as “limits.” Limit 13 of this rule identifies forest management activities on state and private lands within the State of Washington that are at least as protective as the elements of the Forests and Fish Report. The Forests and Fish Report is a document that makes recommendations for modifying forest management and timber harvest practices for the benefit of salmon and aquatic and riparian resources. The report was prepared collaboratively by a group of stakeholders from private industry, public interest groups, State and Federal Government agencies, and Tribes. NMFS has not yet determined whether the State’s Forest Practices Rules as revised by the Forests and Fish Report comply with this rule.

FWS has not issued a comparable 4(d) rule, but is considering whether to exempt the take of bull trout that may occur through implementation of the Washington State Forest Practices Rules by adopting a 4(d) rule. A FWS 4(d) rule could be structured to exempt take that might occur as a result of implementing the State regulatory program, provided that the program is consistent with the conservation needs of the species. However, a 4(d) rule can only address take of species listed as threatened. The Forests and Fish Report addresses some endangered and unlisted species, as well as threatened species.

Because both threatened and endangered species are likely to be affected and because there are alternative methods for meeting the requirements of the ESA, the State is working with both Services to develop one or more proposals.

State of Washington’s Programs and Proposals

The Washington State Forest Practices Board (Board) was established in 1975 by the Washington State Legislature under the State Forest Practices Act. By law, the Board is charged with establishing rules governing forest management activities on non-Federal forest land in the State in order to protect public resources while maintaining a viable timber industry. Those

rules, as embodied in the Washington Administrative Code (Title 222 WAC), specifically consider the effects of various forest practices on fish, wildlife and water quality. The Forest Practices Act also requires the Washington Department of Natural Resources to administer and enforce all Board-adopted rules on non-Federal forest land. The Board adopts Forest Practices Rules pertaining to water quality protection after reaching agreement with the director of the Department of Ecology (Ecology) or the director's designee on the board.

Beginning in late 1996, the participants of a stakeholder negotiation process known as Timber, Fish, and Wildlife (TFW) began working on additional aquatic and riparian protections because of the imminent listing of several salmon species in Washington under the ESA, and because new information from watershed analyses and other sources indicated riparian protections in place at that time were not adequate for public resource protection. The participants agreed to negotiate collaboratively in an effort to submit a proposal to the Forest Practices Board. Over the course of the negotiations, representatives from Federal agencies and Washington counties joined the effort, and representatives of environmental interests and some Tribes withdrew from the process. The remaining stakeholders continued negotiating and went on to write the Forests and Fish Report (April 1999), which ultimately became the basis for new Forest Practices Rules with increased attention to the needs of salmon and other aquatic and riparian species on forest lands. The groups contributing to the development of the report included Federal agencies (FWS, NMFS, and Environmental Protection Agency), state agencies (Washington Departments of Natural Resources, Fish and Wildlife, Ecology, and the Governor's Office), the Tribes, the Washington State Association of Counties, the Washington Forest Protection Association, and the Washington Farm Forestry Association.

Following publication of the Forests and Fish Report, the Washington State Legislature directed the Forest Practices Board to adopt rules consistent with the Forest and Fish Report. As a result, the Board conducted an evaluation of the proposal, and alternatives to the proposal, for modifying the Forest Practices Rules. This evaluation included a State Environmental Impact Statement (SEIS), under the Washington State Environmental Policy Act. The State's Final SEIS, entitled "Alternatives for Forest Practices Rules for Aquatic and Riparian Resources" was published in April 2001.

In consideration of this evaluation, the Forest Practices Board adopted new rules in May 2001, which were based on the Forests and Fish Report. Effective July 2001, these new rules cover a wide variety of forest practices and include a new, more functional classification of rivers and streams on non-Federal forest land; improved plans for properly designing, maintaining, and upgrading existing and new forest roads; additional protections for unstable slopes; greater protections for riparian areas intended to maintain properly functioning conditions; a process for adaptive management; and other features.

Washington State has now entered into discussions with the Service's in anticipation of submitting an application for ESA take authorization (to cover listed and unlisted resident fish and selected amphibians) pursuant to Section 10(a)(1)(B) of the Act, a 4(d) Limit, or both, for

the Washington State Forest Practices Rules that regulate forest management activities on non-federal forest lands in the state of Washington.

Review Under National Environmental Policy Act

The Services will conduct an environmental review of the application package(s) to be submitted by the State and prepare a Federal EIS. The EIS will analyze the proposal, as well as a full range of reasonable alternatives and the associated impacts of each. The Services are in the process of identifying the issues and developing alternatives for analysis, and scoping is a major part of this process. Alternatives under consideration prior to scoping included: a No Action alternative; an alternative resulting in the issuance of a Section 10 Permit based on an HCP, which includes the full complement of practices endorsed by the Forests and Fish Report; an alternative resulting in NMFS determining that the State Forest Practices Rules and non-regulatory elements of the State's program are at least as protective of threatened fish as the Forests and Fish Report, thus qualifying the program under Limit 13 of the July, 2000 4(d) rule; an alternative that includes the adoption of a similar 4(d) rule by the FWS; and alternatives involving an ESA incidental take permit or 4(d) rules associated with measures that are either more or less protective than the complete Forests and Fish Report package. Issues and additional alternatives are identified in this report, based on input received during scoping. Issues and alternatives may be further modified prior to and during the development of the DEIS.

1.2 Objectives

The objectives of this scoping report are to:

- Document and describe the scoping process and the scoping activities that have taken place;
- Summarize the scoping comments and other responses received during scoping;
- Describe the preliminary issues identified during scoping;
- Describe the preliminary alternatives identified during scoping; and
- Present in appendices, examples of the scoping materials prepared, lists of people attending the scoping meetings, copies of the scoping meeting notes, and a list of the scoping respondents.

2.0 Description of Scoping Process and Activities

The scoping process for this project involved a number of activities that supported both public and internal scoping. These activities are identified in the following paragraphs.

2.1 Notice of Intent

Scoping was officially initiated with the publication of the Notice of Intent to prepare a Draft EIS in the Federal Register on Monday, March 17, 2003 (Appendix A). This notice stated that there would be a 30-day public comment period for the purpose of gathering information on the scope of the issues and the range of alternatives to be analyzed in the EIS.

2.2 Scoping Meetings and Public Notification

The Notice of Intent also identified the dates, times, and locations at which four public scoping meetings would be held (Table 1). Public notice of these meetings was also made through issuance of a press release by the Services on March 10, 2003 (Appendix B). In addition, public notice of these meetings was made through e-mails and mailings of paper notices by the DNR to all those on the Forest Practices Division “Meeting Agenda” and “Meeting Notices” lists. At least one newspaper article was written and published by The Daily World (daily newspaper of Grays Harbor and northern Pacific counties) describing the meetings on March 13, 2003; it is available online at:

<http://www.thedailyworld.com/daily/2003/Mar-13-Thu-2003/news/news6.html>.

The meetings each began at 5 p.m. with a 1-hour open house to accommodate informal discussion and questions. Then at 6 p.m. a ½-hour presentation was made by Federal and State representatives and this was followed by a public comment period in which attendees could state their scoping comments for the record. A variety of materials were available to the public at the public meetings. These are provided or identified in Appendix C.

Table 1. Schedule and Locations of Public Scoping Meetings.

Date	Place	City
March 18, 2003, 5 - 8 p.m.	Tacoma Sheraton Hotel	Tacoma, WA
March 20, 2003, 5 - 8 p.m.	Red Lion Hotel	Port Angeles, WA
March 25, 2003, 5 - 8 p.m.	Red Lion Hotel at the Park	Spokane, WA
March 26, 2003, 5 - 8 p.m.	Central Wash. Univ. Grupe Center	Ellensburg, WA

Lists of the attendees for the public scoping meetings are provided in Appendix D. The number of people who signed in at each meeting are as follows:

Tacoma Meeting	29
Port Angeles Meeting	11
Spokane Meeting	20
Ellensburg Meeting	9

Notes describing each meeting, including the public comment offered at each are presented in Appendix E. The comments identified at these meetings are incorporated into the summary of scoping input provided in Section 3.0 (Summary of Public Scoping Comments).

2.3 Written Comments

In addition to the oral comments received at the meetings, 30 scoping comment letters were received, along with a number of written comments handed in at the meetings (see Appendix F for a listing of the letters). The 30 letters consisted of 238 pages of original input. In addition, they included many hundreds of pages of attachments. The comments submitted in these letters have been summarized in Section 3.0 (Summary of Public Scoping Comments).

2.4 Internal Scoping Meetings

During and following public scoping, a number of project EIS team meetings were held to discuss: (1) the EIS outline, (2) the public scoping comments received, (3) the issues to be analyzed in the EIS, (4) the alternatives to be analyzed in detail in the EIS, and (5) the analysis methods to be used to assess the effects of the alternatives relative to the issues. The EIS team consisted of representatives from NMFS, FWS, the DNR, Ecology, the Department of Fish and Wildlife (WDFW), and Tetra Tech FW (the EIS contractor). The key project EIS team meetings that covered scoping, the issues, the alternatives, and the analysis methods took place on April 22, May 9, May 21, June 16, and June 23, 2003. In addition, project team members independently conducted reviews of public scoping comments, analyzed the issues, and considered alternatives, in preparation for the team meetings.

The issues and alternatives to be analyzed in the EIS, as a result of the scoping described in this section are presented in Sections 4.0 (Issues to be Analyzed in the EIS) and 5.0 (Alternatives to be Analyzed in the EIS), respectively.

3.0 Summary of Public Scoping Comments

A large number of public scoping comments were received as a result of the scoping process described in Section 2.0 (Description of Scoping Process and Activities). The purpose of this section presents a summary of those scoping comments. It is divided into three subsections: process responses, issue/EIS content responses, and comments on the alternatives. The language in this draft is a summary of the language used in the original comments and expresses the views and opinions of the original commenters. The original letters are maintained in the project administrative record.

3.1 Summary of Process Comments

- Request additional opportunity to provide scoping comments when the decision is made regarding the form of assurances.
- It is inappropriate for the Services to initiate scoping before determining the legal avenue for granting assurances.
- The Federal Services and the DNR's Federal Assurances program are negotiating the level of protections to be in the State's HCP in a process that appears to be closed to the general public. These negotiations must be fully transparent to the public. The process should be opened up to input from the public and independent scientists. The State's conservation plan should not be dominated by back-room deals cut between the timber industry and federal and state agencies.
- The Yakama Nation indicated that if the Services can not fully employ their comments and recommendations, they would respectfully request a written response and direct consultation.
- Dan Boeholt stated that the process has not been user-friendly so far – finding information about the proposed action and attending meetings.
- It is very important that the schedule determined by the State Legislature be adhered to – Federal Assurances must be completed by June 30, 2005.
- It would be highly appropriate, given the potential term of the permit, to include a draft biological opinion in the review package at the DEIS stage.
- The EIS should be developed by an objective third party.
- Concern was expressed that there was insufficient notice regarding the public meetings and that none were held in Southwest Washington.
- Concern was expressed over why email comments were not being accepted.
- The relationship of the EIS process with the Clean Water Act needs to be made clear and documented and the requirements for satisfying the Clean Water Act need to be completed.

3.2 *Summary of Issue and EIS Content Comments*

General

- The impact analyses need to address variations in environmental conditions, forest management practices, and environmental outcomes among eastern and western Washington, different forest types, different land ownership types, different watersheds, and the intensity and nature of different landowner's forest practices.
- Impact analyses should address each type of permitted activity, including clearcutting, the use of increasingly shorter timber rotations, "highgrading," logging of entire watersheds over a short timeframe, the conversion of native tree species to other species, and many other practices.
- The impact analyses need to consider the scientific controversy over the efficacy of the FFRs.
- The NEPA analysis should address concerns regarding the FFR identified in: the Washington Environmental Council's March 4, 2000 comments to the National Marine Fisheries Service regarding their 4(d) rules for threatened salmon and steelhead and associated Environmental Assessments; the Yakama Nation's letter dated February 28, 2000 to the National Marine Fisheries Service concerning the 4(d) rule on salmon; and the *Review of the 29 April 1999 "Forest and Fish Report" and of associated "Draft Emergency Forest Practice Rules"* published in January 2000 by representatives of the SER and AFS.
- To the extent that the HCP differs from other HCPs and aquatic habitat protection proposals covering the same species in the same geographic region, the Services must present rationale for the differences (refer to the DNR state lands HCP, Simpson HCP, PALCO HCP, NMFS short term HCP for California (1999), NFMS determination of what constitutes no take in the context of the PALCO HCP (1998), NMFS conservation measures for coho in Oregon (1998), Pollock et al (1998), Spence et al (1996) and FEMAT (1993).
- The EIS should assess the environmental benefits of a mature and effective regulatory program that has been upgrading rules based on science and public input as documented in a number of SEPA documents, forest practices rules to protect wildlife habitat and individual species, forest practices rules for reforestation, and watershed analysis requirements of the forest practices rules.
- The Yakama Nation recommended that the covered species be expanded to include fish, other aquatic fauna, wildlife, plants, and other cultural resources that can be negatively affected by forest practices.
- The expression "best available science" has been used and abused for arriving at the FFR agreement. In the EIS, use integrity to replace "political correctness" and "political expediency."
- The project purpose should be for the State to obtain Federal Assurances by the Services, ensuring that the State's forest practices program and rules consistent with the FFR do not result in unlawful take of a species listed for protection under the ESA.
- The EIS should avoid using too many acronyms.

- Effects analysis should consider a baseline of environmental conditions referenced to current degraded conditions, as well as environmental baseline conditions that existed historically before current forest practices took effect.
- The environmental baseline must consider the conservation efforts on federal lands, existing and proposed HCPs, on private, state, and municipal forestlands, and other recovery planning efforts in the forested area of listed ESUs and DPSs.
- The affected environment section should consider available information on the sustainability of timber harvest on private/state lands in Washington (see reports by the Univ. of Washington – by Adams, 1992 and Bare et al., 1995) and the DNR rate of harvest studies conducted in 1993 and 1996 and the available information on the increase in the public land base and the decrease (conversion) of lands to non-forest uses.
- The EIS should focus on the effects of the proposed federal action – modifying ESA take prohibitions or authorizing take that otherwise would be prohibited – rather than the underlying forest practice activities. There is no reasonable basis to assume that overall levels of those activities would be significantly reduced under the no action/failure of assurances alternative, or significantly increased under any other alternative, at least for the first few years or even decades. However, federal actions to relieve forestland owners of the legal risks associated with potential take litigation would significantly improve the investment climate for the timber industry, making it more likely that additional investments will be made to increase timber growth rates, increase the amounts of land managed for commercial timber production, and improve manufacturing capacity to process Washington timber.
- The EIS should recognize that habitat trends in forested areas already were improving before the salmonid listings and can reasonably be expected to continue to improve under all alternatives. This is due to: 1) the decline in timber harvest and road construction on federal lands, 2) the decline in new road construction on nonfederal lands, 3) adverse impacts from existing roads and past and future timber harvests are declining, and 4) improvements in forest practices rules and other HCPs.

Air

- Consider the effects of the alternatives on the air quality within Olympic National Park. The Park is a Class I area under the Clean Air Act, a designation requiring maintenance of the highest air quality standards.
- The alternatives would not have significant effects on air quality and any differences among the alternatives would be very local and temporary.

Geology, Soils, and Erosional Processes

- Identify and map the steepness, stability, and erosion hazard rating of slopes, and the location of any previous slope and road failures, and erosion and mass wasting incidents.
- The EIS should examine the efficacy of the FFR package for steep, unstable slopes. These measures appear to lack specific limitations on logging and roading and instead, rely heavily

on procedural reviews which may well allow logging and roading to proceed on even the steepest and most unstable slopes.

- The EIS should recognize there are numerous forest practices, especially under the FFR, that protect forest soils and it is critical for the landowner to follow them, if he wants to grow and harvest trees in the future. The literature supports the compatibility between modern forest practices and soil productivity.
- Analyze the expected effects on fine sediment delivery, coarse sediment delivery, erosion rates, landslide activity (frequency and magnitude), and ground compaction and runoff.
- Address the possible exemptions for small landowners for RMAPs. In some basins, these exempt landowners make up a large part of the anadromous zone. Need to consider the economic and social effects of RMAPs for small landowners.
- The impact of giving landowners 15 years to complete road remediation work under the FFR package needs to be examined.
- The Services should examine the environmental impact of the new RMAP legislation being drafted at this time.
- RMAP Rules have been so weakened recently as to be ineffective at riparian protection. This is evidenced by the failure of the DNR to gain consensus in developing a meaningful RMAP that will protect Washington waters. If landowners cannot afford to follow reasonable RMAP provisions, then they should be excluded from the benefits of the HCP.
- Road density should be utilized as an indicator of risk to covered species.

Water Resources – Water Typing

- The EIS needs to examine the adequacy and accuracy of the stream typing system employed by each alternative, with regard to fish presence/absence, and with regard to their success in identifying stream reaches where fish should be present, and could thus be expected to repopulate the stream reach if restoration activities are conducted. The potential inaccuracy of the FFR model needs to be considered in the impact assessment.
- Independent scientific review and field-testing of the DNR model for determining fish presence could resolve the many questions about its value and accuracy.
- The proposed model does not account for the fact that “end of fish use” can change significantly on an annual basis. Stream segments not used one year may be used in another when fish numbers are greater.

Water Resources – Surface Water Quality

- Include adequate baseline data which specifically describes the habitat structure and quality of all Class I, II, III, IV, and V streams in the HCP area, including stream temperature, sedimentation and turbidity, percent shade canopy, LWD, spawning gravel, riffles, pools, and fish spawning and rearing sites. Describe and map all watercourses, roads, road crossings, landings and skid trails.
- The EIS should analyze impacts of the HCP on stream sedimentation, temperature (including summer maximums and winter minimums), and turbidity.

- Consider whether the best model is being used to predict the relationship between temperature and riparian shade, the downstream cumulative effect of Type N riparian harvest on stream temperature, and whether one temperature target is suitable for all species of concern.
- The EIS should analyze impacts of the HCP on the ability of streams in the area to meet applicable basin plan limitations, water quality standards, TMDLs, and antidegradation requirements over the life of the HCP.
- Assumptions regarding the adequacy of water quality standards to protect covered species needs to be documented. For example, bull trout often require water that is considerably colder than the temperatures required by Washington Water Quality Standards.
- The impacts of giving landowners 15 years to complete road remediation work needs to be examined.
- Evaluate the impacts of herbicide spraying on water quality and the efficacy of each alternative's measures for addressing chemical applications. Consider the impact of allowing chemicals to be applied to seasonal non-fish bearing streams and the impact of allowing chemicals to be applied by ground applications to the inner and outer zones of other stream types. Also consider how chemicals applied in and around non-fish bearing streams may be retained in water and sediments and transported downstream, where they can affect sensitive fish and other aquatic species. Also consider those chemicals which may become more toxic in the field than in the laboratory due to their application in conjunction with surfactants, dispersants, or solvents. Bioaccumulation in plant and animal food sources for the covered species should also be considered.
- Note that several tribal (e.g., *Jamestown S'Klallam Tribe*) research projects are sampling FPA-associated aerial herbicide spraying to quantify pesticide levels in surface waters before and after spraying.
- A related issue could be contaminant exposure to gatherers of NTFP/culturally significant species.
- Change the "zero spray drift" tolerance language to "minimal spray drift." Zero spray drift is the goal, but it is an unrealistic statement.
- Consider the effects on water quality of Olympic National Park.

Water Resources – Hydrology

- The EIS must address water flows and timing and how they are affected by upslope forest management practices. Consider peak flows (frequency, magnitude, duration), low flows (frequency, magnitude, duration), and floodplain function.
- The FFR does not consider the rate of harvest in a watershed or the immaturity of forest canopy, which can have significant impacts on basin hydrology, such as extreme peak flows and delivery of fine sediment. The rules allow the DNR to condition the size of clearcuts in the rain-on-snow zone where peak flows have resulted in material damages to public resources, but there is no indication that DNR has applied this to any Forest Practices Applications.

Water Resources – Ground Water

- The EIS should analyze impacts of the HCP on ground water temperature and ground water quality from pesticides.
- The effects of logging and road construction on ground water flows by changing water retention rates and altering soil hydrology.

Riparian and Wetland Processes

- The EIS should analyze impacts of the HCP on canopy retention for shade and recruitment of small and large LWD and litterfall. Also consider maintenance of stream bank stability and detrital production.
- The EIS should analyze whether the desired future condition (DFC) will be met within the plan's 50-year time horizon, and the impact of failing to meet the DFC within different time frames and locations. It is highly questionable whether the DFC will be achieved on the majority of the plan area within 50 years or soon thereafter given the number of exemptions to the FFR package, the amount of forestland "grandfathered" under the old rules, and the amount of logging permitted on different stream sections and within different riparian zones. Further, it is questionable whether it will ever be achieved on many stream segments and in some riparian zones, given landowners ability to repeatedly log some riparian zones where retention of the largest trees is not required, as well as the large number of stream segments on which logging is essentially unrestricted and no retention is required.
- The EIS should examine the impact of the FFR's reliance on a DFC and riparian buffer widths based on site potential trees (SPTs) of only 100 years. SPTs are actually significantly older and thus taller.
- DFC targets for riparian stands are based only on basal area/acre which results in narrow buffers. Silviculturists do not manage stands using basal area/acre alone; tightly spaced pole diameter stands can have very high BA/ac.
- Basal area targets in the FFR are for Douglas-fir on the westside, which grows slowly on wet ground. These targets don't work very well in the Hoh. Research should address this issue.
- The benefits of thinning or other silvicultural treatment must be supported (also see Roni et al 2002 finding that while thinning can enhance LWD recruitment where existing trees are small, it can retard recruitment where trees are already large enough to help form pools).
- The EIS should examine the impact of the absence of a mechanism for estimating the extent of the channel migration zone over time in the FFRs. In addition, the FFR rules definition of "near term" should be examined and considered in the assessment. The new guidance being developed for the Board Manual, which does not carry the weight of rules, needs to be incorporated into the rules.
- The EIS must examine the impacts of failing to require the retention of trees and other vegetation along the majority of seasonal, non-fish streams segments. The EIS should examine the assumption, implicit in the FFR package, that sedimentation, peak flow, channelization, nutrient input, LWD, and temperature problems on smaller, non-fish streams will be sufficiently corrected by stream buffers provided on downstream reaches.

- The EIS should examine the effects on near-stream microclimate, floodplain function, effects on the hyporheic zone, associated wetland function, and short and long term riparian function.
- The EIS should examine how wetlands, seeps, and springs will be impacted by the alternatives.
- It was pointed out by one landowner that the riparian rules are acting in reverse on his lands. He is trying to establish trees on old agricultural lands, but now has no incentive to do so in riparian corridors.
- Address the exemptions for small forest landowners. In some basins, these exempt landowners make up a large part of the anadromous zone. The 20-acre exemption was not part of the FFR and was a legislative addition afterwards. As the majority of the properties eligible for the 20-acre exemption are low elevation properties, they have a high likelihood of existing on fish-bearing streams. Landowners have split their ownerships among family members and LLCs to avoid the FFR buffers or having to do an alternate plan to cut close to the streams. The new more inclusive definitions of small forest landowners could include landowners who harvest less than 2 million bf/year. Consider these larger landowners if this should happen.
- In the 1987 rules, regulators applied Ecology Shorelines definition of Ordinary High Water to streams, wetlands, and floodplains. This allowed the application of buffers to streams and headwater wetlands. The current definition of bankfull width precludes the riparian protection of rearing and refuge habitat critical to juvenile salmonids and cutthroat.
- Insufficient dead and dying standing and downed wood is being left behind. Almost all is allowed to be removed.
- Research in a CMER study produced region-specific information about the 300, 52, and 13-acres default contributing basin areas in the East, West, and coast of Washington. The results show only a 3-acre contributing basin in the Hoh, which is in the 52-acre default zone. However, there is reluctance to apply the findings.
- Two obvious candidates for adaptive management (as proposed by the Stillaguamish Tribe) are perennial initiation points as defined in FFR and the quagmire of site class and DFC. Valid scientific studies have shown the original assumptions to be wrong.
- Assess the differences between the Washington FFR rules and the Northwest Forest Plan, especially its riparian protections, to determine if additional requirements may better ensure recovery of aquatic resources.
- The EIS should examine the impacts of grazing in riparian areas in Eastside forests and whether or not the alternatives adequately address these impacts.
- Type S or F Water RMZ protection should apply to associated headwater wetlands as they are not isolated from and therefore are functionally “associated” with, the channel below. They may serve as fish habitat during periodic inundation and thus meet the FFR definition of fish habitat, but do not currently receive buffers.

Vegetation

- The EIS should analyze impacts of the HCP on late seral forest characteristics of stream corridors.
- The EIS should analyze impacts of the HCP on vegetative structure and diversity, both during harvest and over the long term.
- Address the introduction of non-native noxious weed infestations. Consider these within riparian zones.

The EIS should address the effects of the alternatives on the frequency and intensity of wildfire and disease, especially in eastern Washington.

Fish and Amphibian Species Assessments and Quantification

- EIS must include a detailed biological analysis for each species covered by the HCP (whether listed or unlisted) and all designated critical habitat. Furthermore, the EIS must analyze the impacts on all species “occurring or potentially occurring” on lands subject to the HCP, regardless of whether they will be covered by the HCP.
- For each species, the analysis must: 1) specifically indicate how the HCP will affect their prospects for survival and recovery using population figures, estimates of extinction risk, and criteria for describing survival and recovery; 2) describe activities that may result in take of covered species; and 3) quantify the anticipated level of take resulting from all activities authorized under the HCP.
- Quantification of take must be done and may be expressed in terms of habitat acres or units affected where the specific number of individuals is unknown or indeterminable. According to the courts, the Services need “to provide a clear standard for determining when the authorized level of take has been exceeded.” In contrast, some commenters believe that it is impossible to quantify take in this situation, and that neither the EIS nor the HCP, BO, or ROD should attempt to quantify the amounts of take likely to occur under any alternative. They note that they are not aware of a single case where a nonfederal forestland owner has been successfully prosecuted for incidental take of any aquatic species caused by a forest practices activity.
- Species assessments should address such issues as species abundance and distribution, habitat requirements, biological relationships with other species, and life history and population trends, both range-wide and within the plan area.
- For salmonids, the assessments should comply with the procedures in the NMFS document entitled *Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale* (August 1996). The assessments should also be peer-reviewed by academic experts.
- For listed species, the Services must identify concrete, measurable, quantified biological goals for each of the covered species, including goals for species’ population levels, distributions, and specific habitat components and requirements. The goals should correspond to conditions needed for the species’ recovery.
- For stream habitat consider pool size and frequency, spawning gravel quality and quantity, substrate embeddedness, and channel conditions and dynamics.

- The assessments must consider the effects of both foreseeable and unforeseeable changed circumstances on the assumptions, conclusions and mitigation measures included in the HCP. Foreseeable circumstances may include fire, flood, lightning, disease, and other stochastic events. Also consider significant changes in landowners forest management practices, additional species listings, declines in the condition of covered species, designation of critical habitat for the covered species, and human-induced climate change.
- Consider the impact of forest chemicals on fish and amphibians and their food sources.
- The EIS should examine the role of invertebrates as food sources and water quality indicators and how the alternatives will affect them.
- The proposal must identify which areas will be subject to further degradation from logging and road building and which will benefit from road closures and restoration activities.
- Refugia – The EIS should evaluate the failure of different alternatives to fully protect watersheds where fish populations and habitats are most intact, i.e., refugia. On page 205, Spence et al. (1996) state that an essential step the federal agencies must take to address regional and basin-level conservation needs is to “establish a network of key watersheds on private lands that complements Federal key watersheds.”
- Each alternative should be compared with existing recommendations outlined by the Services to adequately protect fish and provide properly functioning conditions (FEMAT, PACFISH, NMFS/ODF Proposal, Mantech Report).
- Consider the effects on species of Olympic National Park and other national parks. Of particular concern to Olympic National Park are the Ozette sockeye, bull trout, Puget Sound chinook within Olympic National Park, as well as the Pacific Lamprey (petitioned for listing) and the Olympic mudminnow (an endemic species, state-listed Species of Concern).
- The Services may approve an HCP with respect to unlisted species only if the HCP addresses and protects the species habitat “as if the species were listed pursuant to the Act.” (see House Conference Report and HCP Handbook pages 4-1 and 4-4.)
- The burden of non-federal land is particularly great for amphibian conservation. For example, the Columbia torrent salamander has over 75% of its range on non-federal lands, Van Dyke’s salamander and Cascade and Olympic torrent salamanders have over 50%, and the tailed frog has over 25%.
- Effects on microclimate are especially important for evaluating effects on amphibians. Buffer width greatly influences microclimate.

Other Wildlife Species Assessments and Quantification

- The EIS must analyze the impacts on all species “occurring or potentially occurring” on lands subject to the HCP, regardless of whether they will be covered by the HCP.
- The EIS should analyze impacts of the HCP on wildlife diversity, both during harvest and over the long term.
- Consider the impact of forest chemicals on other wildlife and their food sources.
- Current Forest Practices Rules do not adequately protect upland wildlife from adverse impacts resulting from forest practices. The result has been the continued decline of many native species of wildlife. Specific areas of concern include:

- Failure to protect a sufficient amount and distribution of old-growth forest, talus environments, deep litter and duff layers, and forests along streams and wetlands;
- Failure to prevent or adequately mitigate forest practices with the potential for significant adverse impacts on wildlife habitat, including threatened or endangered species, or other species of concern;
- Cumulative effects on wildlife are not considered or properly mitigated when forest practices are approved;
- Pre-logging field surveys of critical habitat for at-risk species are not required.
- Consider the effects on species of Olympic National Park and other national parks.

Harvest Activities under the Old Rules

- The impact of the large number of logging plans that were “grandfathered into” the FFR package should be evaluated. Reportedly, 814,688 acres of forest are being logged under the old rules, due to 592 forest practices applications that were reportedly filed at the last minute to take advantage of the grandfathering loophole.

Land Use and Ownership

- Address the withdrawal of lands from participation in the plan over time in ways that would undermine the plan’s effectiveness, including the conversion of forestlands to rural sprawl and other development and non-forest land uses. Consider that conversion may increase because of the weakened competitive position of Washington timber owners in the global markets (especially with depressed timber values) and how the alternatives affect this position.
- Consider the possibility of additional conversion resulting from landowners opting out of their existing HCPs, which contain provisions to reduce the likelihood of conversion, in favor of the new FFR HCP.
- The longer the term of any proposed FFR HCP, the more likely that significant portions of the forested land base will be converted in that period, potentially undermining the conservation purposes of the HCP. Could possibly use data from the State tax records or the Growth Management Act forest land designation to help identify the extent of conversion.

Cultural Resources and Treaty Rights

- To satisfy Section 106 of the National Historic Preservation Act (36 CFR 800), historic properties that may be affected need to be identified and their eligibility for the National Register needs to be determined. This will require surveys. The professional report would need to be submitted to the SHPO for concurrence and the Tribes need to be notified and consulted.
- All alternatives should carefully assess the effect on cultural resources in State forest lands. Forest lands are particularly important to Northwest tribes and their cultural and religious beliefs. Assessing these impacts will require some consultation between the Services and the affected tribes to more completely develop the scope of the DEIS.

- Off-reservation American Indian treaty rights must be considered, including consultation with the relevant tribes, according to the HCP Handbook (p 3-9).
- It should be recognized that the TFW and FFR cooperators are nearing completion of the Cultural Resource Protection and Management Plan (CRPMP) to address the two outstanding cultural resource tasks identified in the FFR – a cultural resources module for watershed analysis and development of processes to resolve forest practices related cultural resource issues. The CRPMP has four goals intended to protect tribal cultural resources and historic and archaeological sites. The final draft is scheduled for April 2003 after which it will be presented to the agencies, landowners, and tribes for acceptance. Eventually it will go to the FPB for rule revisions suggested in the Plan.

Social and Economic Factors

- The economic benefits of recovering salmonids, water quality, and other resources associated with the alternatives should also be identified and measured. Public values also need to be considered in the EIS, including non-market costs of adding, for example, sediment to streams and other environmental effects.
- Economic analyses in the EIS should also account for the 16% tax cut given to the timber industry by the State Legislature in association with the FFR package, estimated to be worth \$1 billion over 50 years.
- Economic benefits should include the decision of companies to locate in the state because of the quality of life and desirability of living here, as well as benefits to businesses directly dependent on these resources, such as fishing and recreation.
- Consider the economic impacts of restrictive rules on property owners and others who make a living from the land and the effect on the economy of the state. What is the estimated loss of income from the removal of mining, livestock grazing, timber harvest, road construction, etc, when these lands are removed from resource production and extraction?
- Rural cultural, social, and economic resources must be credibly analyzed for the results of the EIS to be justifiable.
- Consider that Federal Assurances can not give assurances against third-party lawsuits from over-zealous environmentalist organizations, as evidenced in the last decade.
- Address the weakened competitive position of Washington timber owners in the global markets (especially with depressed timber values) and how the alternatives affect this position. This may also affect conversion.
- Relative to “environmental justice,” the proposed action (i.e., obtaining federal assurances) would help stabilize the economic and social structures of many rural areas which have been suffering due to changing economic conditions. Many low income, rural and minority populations reside in and around forested lands and depend on such lands for their livelihoods. Concern was expressed that small landowners bear a disproportionate amount of the cost of ESA protections under the FFR.

Many data are available to assess the economic impacts associated with the NW Forest Plan and FFR. In addition, the EIS should include data from the cost benefit analysis completed by the FPB as part of their rulemaking in 2001. Also see the small business economic impact statement.

Cumulative Effects

- The EIS must evaluate the cumulative effects of timber harvesting and other land-disturbing activities on each species affected by the HCP, taking into account the incidental take already authorized by existing take permits. Cumulative impact assessment should also consider other major land management plans and programs. Particularly consider nearby urbanization
 - The State Forest Practices program currently has no cumulative effects review on a comprehensive level. Three factors to consider in this regard as followings.
 - SEPA requires consideration of cumulative effects; however the vast majority of Forest Practices Applications are exempt from SEPA.
 - Washington's watershed analysis program, which endeavored to prevent cumulative effects, is on a drastic downward trend; no watershed analyses have been completed since April 2001.
 - The Forest Practices Board has continually refused to develop and adopt a permit system that scientifically takes the cumulative impact of multiple related forest practices into account.
 - The EIS should evaluate the effects of the failure of the FFR to include and be based on watershed analysis.
 - The DNR asserts that several provisions in FFR mitigate for cumulative effects. But there are currently no programs in place to ensure that this is the case. The FFR provisions that reduce the potential for cumulative effects include rules that:
 - protect stream banks from erosion;
 - limit the amount of sediment entering streams;
 - ensure fish passage to upstream habitats;
 - minimize the construction of new roads;
 - require landowners to produce a RMAP;
 - establish mature riparian forest over time;
 - establish an adaptive management and monitoring program.
- Also, additional Class IV-Special forest practices that require SEPA review, harvest unit size and separation requirements, and restrictions on the size of clear-cuts in rain-on-snow zones, reduce the potential for cumulative effects.
- Consider the relationship of the proposed HCP for the FFR with other existing HCPs (e.g., DNR, Plum Creek, City of Seattle, City of Tacoma, Murray Pacific, Port Blakely) and the likelihood of landowners opting out of these other HCPs, together with the impacts of such an action.
 - Relative to wildlife, consider cumulative effects in regards to:
 - Impacts on riparian bird communities
 - Impacts on riparian amphibian communities
 - Impact on upland amphibian communities
 - Impacts on riparian plant communities
 - Impacts on other riparian species
 - Impacts on cavity-nesting species
 - Impacts on upland wildlife

- The EIS' cumulative effects analyses must compare the alternatives outcomes with conditions associated with the full recovery of each of the covered species.

Mitigation

- Species-specific mitigation measures and management actions should be included for each significant impact identified.
- The EIS should objectively analyze the likely short-term and long-term effectiveness of each of the HCP's proposed measures to mitigate incidental take and should objectively evaluate whether certain mitigation measures are impracticable or infeasible.
- The EIS should evaluate the relative habitat value of lands set aside or subjected to restricted harvest vs. lands on which more intensive harvest will be permitted.
- The EIS should compare the HCP mitigation measures with those provided by other recently approved HCPs for West Coast salmonids and other aquatic species.
- The Services must provide some rational basis for findings on mitigation and "practicability."

Monitoring, Enforcement, and Compliance

- The EIS should evaluate the effectiveness and anticipated funding of the monitoring program.
- The EIS should evaluate the adequacy of the HCPs enforcement and compliance mechanisms.
- Monitoring should be fully-funded, independent, and science-based and include measurable performance and effectiveness monitoring indicators.
- Mechanisms to better oversee the implementation of the plan's conservation measures and landowners' compliance should be included.
- The likelihood of consistent compliance needs to be evaluated, especially in light of the complexity and variability of the FFRs prescriptions; this makes compliance monitoring all the more difficult.
- Implementation problems to date include a lack of ongoing monitoring, the lack of a completed CMER committee handbook and guidelines, and lack of clear lines of responsibility between the DNR, the Forest & Fish Policy Committee, and CMER.
- Monitoring and adaptive management measures must include mechanisms capable of detecting and implementing limits on cumulative watershed effects.
- Compliance monitoring must be funded and implemented, and must include provisions for TFW community to participate (e.g., tribal access to private lands), in order to verify compliance.

Adaptive Management

- The EIS should evaluate the adequacy of the HCPs adaptive management program, particularly in light of the "no surprises" assurances. Many believe that the "no surprises" assurance is contradictory to the fundamental elements of monitoring and adaptive

management, and should not be offered as part of an HCP. The EIS should examine the likelihood that monitoring and adaptive management programs will actually identify cases where forest management is failing to produce specific environmental conditions associated with individual covered species recovery. It should then examine how any likely failures to continue producing the environmental conditions associated with the species recovery will impact those species and their chances of recovery.

- Adaptive management should be fully-funded, independent, and science-based, and should assess the plan's effectiveness over time and make plan improvements which may be needed over time. It should include "triggers" (clear, measurable biological goals and outcomes) that would indicate whether adaptive management and corrective actions are needed to ensure the plan's continued effectiveness over time. Objective, peer-reviewed science without political considerations must be the basis for any adaptive management program.
- The Services should put in place contingencies that allow for reassessment of the assurance agreement as legislative changes to the forest practices rules (as a result of lobbying by special interest groups) are put in place. The EIS should consider the possibility of political changes to the rules that are not based on science. Rule changes to date have come from legislative and lobbying efforts, not through the monitoring and adaptive management feedback loop.
- Consider that there are conflicts between the Manual and the Rule. Sometimes the Manual undoes what the Rule intended (e.g., the Channel Migration Zone). There needs to be a mechanism for the Federal biologists to be involved in approving the Manual.
- Any ITP must consider and take into account the following weaknesses of the FFR that need to be clearly defined in the adaptive management program:
 - there are several variables and uncertainties around the FFR that need to be clearly defined in the adaptive management program;
 - the bulk of the FFR adaptive management program is devoted either to determining whether the FFR will be effective or to developing the tools to implement it;
 - the FFR adaptive management program is almost entirely devoted to justifying the existing regulations;
 - the FFR adaptive management program can only conduct experiments that comply with the FFR rules;
 - monitoring under the FFR must be implemented and scientifically sound;
 - the FFR adaptive management program does not commit to adjusting management policy when objectives are not being met, but the Services need to be assured that changes will be made when information shows that changes are necessary for species protection;
 - the FFR adaptive management program gives the Forests and Fish Policy Committee veto power, which is scientifically unobjective.
- Lines of responsibilities and operational procedures have not yet been detailed in the FFR adaptive management program. This has produced several specific concerns:
 - CMER handbook and guidelines are not completed and could take an extended amount of time to develop;

- changes in CMER budgets need approval from both the Forests and Fish Policy Committee and the Forest Practices Board;
 - the relationship between DNR and the FFR adaptive management program, particularly in regard to “rule tools,” is unclear and problematic.
 - the FFR adaptive management program management capability for multiple contracted projects with total budget in the millions of dollars is limited.
 - there are no clear lines of authority or leadership between DNR, the adaptive management program administrator, and FFPC/CMER.
- The Services must not rely on adaptive management to make up for a risky plan, especially when the monitoring and feedback loops are not well developed. The HCP Handbook states (pages 3-24 to 3-25) that the base mitigation strategy must be sufficiently vigorous so that the Services may reasonably believe that they will be successful.
 - The EIS must provide evidence in the record that the design of any proposed monitoring and adaptive management protocol can achieve its intended goal of preventing harm to fish.
- The EIS should recognize that the FFR-based adaptive management program incorporates biological goals and functional objectives.

Funding for Mitigation, Monitoring, and Adaptive Management

- The EIS should evaluate the adequacy of the commitments for funding the mitigation and monitoring measures and the adaptive management program. If funding is found to be inadequate, the EIS should propose alternate funding mechanisms that would achieve long-term conservation of species for the life of the permit.
- The DNR has estimated that roughly \$34,000,000 will be required to implement the FFRs adaptive management programs; however, future funding for this need is highly uncertain.
- The DNR is also seriously under-funded with regard to implementing the FFRs compliance monitoring, “rule tools,” and effectiveness monitoring provisions.
- The FFR package is also reportedly underfunded with regard to roads projects and the RMAP program.
- The Services should require the HCP to project and disclose its funding needs for adaptive management for the entire span of the permit period. This funding level must then be legally guaranteed. Unless funding is guaranteed, the NEPA impact analysis must include a sound analysis of impacts given insufficient funding.
- The EIS should recognize the chances of obtaining continued appropriations for the FFR program would be much higher if the State’s request is granted so that federal and state elected officials see continued cooperation among the agencies.

No Surprises and the Term of Assurances

- The EIS must analyze both the short- and long-term biological impacts of a “no surprises” provision in the HCP and implementation agreement. This analysis must consider if: 1) the HCP fails to achieve its stated goals; 2) the HCP conditions prove inadequate to protect species; 3) new scientific information is discovered which affects the assumptions or

conclusions of the HCP; and/or 4) unanticipated circumstances significantly change the environmental baseline.

- Consider how providing “no surprises” type assurances may constrain the adoption of improved habitat protection and restoration measures over time, that might otherwise be needed in response to monitoring and adaptive management.
- It is anticipated that in the future, some rules will need to be modified to adequately protect listed species. If a “no surprises” rule is adopted, likely and needed changes to regulations in the future would require compensation, or not be implemented. This would serve as a disincentive for adaptive management and, therefore, the “no surprises” rule should not be offered with this plan.
- 50 years is too long to lock in a permit; if it needs to be this long, then the HCP must be on the conservative side rather than the risky side as it is now.

Alternate Plans

- Consider that NMFS did not give 4(d) rule protections to alternate plans because of information limitations.
- Site-specific, time-flexible management is preferable to the programmatic FFR approach and should be allowed for small landowners.

Watershed and Other Plans and Policies

- Consider other programs and watershed or sub basin planning efforts as the EIS is developed, to ensure that proposed actions are not in conflict with their results.
- NMFS must assure that Washington forest practices indeed provide the level of protection that is assumed in the Federal Columbia River Power System biological opinion, which assumed that habitat restoration efforts would occur in Basin tributaries, including tributary habitat by both state and private parties. NMFS must recognize that many of the proactive restoration activities contemplated under the biological opinion are not moving forward due to failure by BPA to follow through with funding for such projects.
- The Services should give consideration to how well the FFR rules support state and federal requirements under antidegradation policy rules in the Clean Water Act.

3.3 Summary of Comments on Alternatives

General Comments on Alternatives

- There should be no alternatives that authorize more timber harvesting than the HCP. All alternatives selected for detailed analysis should avoid or substantially reduce the significant environmental impacts of the proposed projects.
- The alternatives should not be constrained by what the applicant deems economically “practicable” or “feasible.” If the landowner cites economic considerations as the reason for failing to utilize an alternate land management approach, then they must provide supporting economic information, unless it is proprietary (according to the HCP Handbook). The

Services must analyze and document whether the HCP has indeed minimized and mitigated take to the maximum extent practicable. The HCP Handbook states that “particularly where the adequacy of the mitigation is a close call, the record must contain some basis to conclude that the proposed program is the maximum that can be reasonably required of the applicant.”

- Alternatives should: 1) identify characteristics of some current HCPs that give something more than long-term permission to destroy endangered species habitat with uncertain evidence that replacement habitat is suitable when it is needed; 2) provide assurances that an HCPs long-term guarantee of no new regulations will not exempt the landowner from protecting all species on the property over time, not just those listed at the time of agreement; and 3) reconcile the incompatibility of an HCPs long-term regulatory assurances with effective adaptive management forest practices.
- In determining a full range of alternatives for analysis, the Services should consider the following:
 - The need for a continuing and increased tribal harvest of salmonids to meet treaty entitlements; such alternatives should allow for incidental take of protected species by treaty fishers, if necessary, within acceptable ranges
 - An alternative concerning no timber harvest should be considered and the effects on both the continuing viability of present salmonid stocks and the rebuilding of salmonid stocks to acceptable levels
 - The rebuilding of stocks to commercially harvestable levels and levels sufficient to support a ceremonial and subsistence fishery should also be considered
- Any federal assurance package granted by the Services would need to respond to the scientific uncertainties identified in Schedule L-1 of the FFR Report.
- The EIS should explore a full range of likely alternatives, including multiple alternative HCP structures, multiple alternative rule structures for adoption under a 4(d) rule, and multiple alternatives under any other assurance that may be provided.
- The EIS needs to recognize that if an alternative requiring additional measures, not acceptable to the state and the moderate voices in the timber industry, is selected, the FFR program probably would collapse with results equivalent to the no-action alternative.

Comments on No Action Alternative

- The no-action alternative must accurately describe baseline conditions and assume compliance with and enforcement of existing federal and state laws. It should account for the likelihood that currently imperiled species will be listed in the future and subject to ESA restrictions. The no-action alternative should not result in serious overestimation of the purported benefits of the HCPs mitigation program under the proposed action alternative.
- The HCP Handbook requires a no-action alternative and defines it as not engaging in the activity or modifying it to avoid take (see page 3-35). Since it is generally presumed that people will act to comply with the law, the no-action alternative should assess what is necessary to avoid running afoul of the ESA’s take prohibition.
- The no-action alternative should assume that the coalition of timber owners who support the FFR would weaken and perhaps be destroyed. The EIS should not assume that the FFR

would continue to be funded or implemented under no-action. It is likely that some, if not many, elements of the program would be significantly modified in the absence of federal assurances. The environmental risks of these occurrences needs to be analyzed. The no-action alternative needs to examine the likely impacts of returning to reliance on ESA take prohibitions as the primary tool to protect listed salmonids. .

Recommended Additional Alternatives

- The EIS should analyze the alternative of an HCP/ITP approval based on the state's forest practices program including the state FPA, current FPRs, the April 1999 Forests and Fish Report, and steps which have been and are being taken to further implement the Forests and Fish Report, especially the adaptive management process.
- An alternative based on the 10,000 Years Institute *Low-Risk Strategy for Preserving Riparian Buffers Needed to Protect and Restore Salmonid Habitat in Forested Watersheds of the Pacific Northwest* (includes riparian buffers on all perennial streams of 250 ft. and a riparian buffer equal to one SPTH {50-250 ft.} on all seasonal streams) (see Pollack and Kenard 1998).
- An alternative could be based on either the Mantech Report or FEMAT.
- An alternative that is similar to the proposed action (FFR package), but: 1) generally limits the duration of "No Surprises" guarantees or similar assurances to 5 years or so and 2) does not provide "No Surprises" guarantees or similar assurances for species, forest practices, or forest properties that are not adequately addressed at the outset by the HCP's measures. This pertains to those deficiencies in the FFR package that the reviewers believe are inadequate and that the applicants may not be willing to fix (which includes the majority of the FFR measures).
- An alternative should either: 1) limit the duration of "No Surprises" guarantees or similar assurances to 10 years; or 2) if standard "No Surprises" guarantees or similar language is used for more than 10 years, include language in the ITP, HCP, and Implementation Agreement that expressly states that any improvements or additions to the HCPs conservation measures which might be found to be necessary through the adaptive management process or by the Services will be considered "changing circumstances" and will remain the obligation of the permittees, with the sole limitation that plan improvements or additions which would require the commitment of additional resources by landowners would not be mandatory during the first 10 years following the ITPs approval.
- The EIS should analyze the pros and cons of different terms for assurances. The minimum duration analyzed should be long enough to justify the costs of processing applications for programmatic HCPs, perhaps 10 years or more. The maximum could be as long as 100 years.
- An alternative that does not include the 'no surprises' guarantee to allow changes deemed necessary for species preservation by scientific monitoring should be included. Providing long-term regulatory certainty based on the current rules (which are still untested) is premature.

- An alternative that is more protective than the FPR or the FFR, that would be more comprehensive and effective at protecting and recovering imperiled salmonids, other aquatic species, and water quality across much of Washington State should be included. This is necessary for the Services to confidently make the statutorily-mandated conclusion that an HCP minimizes and mitigates take to the maximum extent practicable. This alternative should explore an option that would reduce take below levels anticipated under the proposed HCP (see page 3-35 of the Handbook). One recommendation for this more protective alternative (from the Hoh Indian Tribe) is:
 1. Continuous riparian buffers based on geomorphic classes
 2. Riparian buffers for headwater wetlands
 3. Riparian protection for streams and wetlands that do not have a scoured channel
 4. Groundwater protection through reduced harvest in groundwater recharge zones including forested wetlands for thermal buffering
 5. Incorporation of regionally appropriate Site Index, Site Class, and Basal Area targets for regionally appropriate tree species such as Sitka spruce in the Coastal Zone
 6. Revision of the CMZ definition to include the area that would be reconnected to flooding by reversing incision after large wood is restored that traps sediment
 7. Revision of sensitive sites definition to include the entire area of all seeps and springs, both perennial and intermittent;
 8. Metrics for legacy wood to provide nutrient cycling, water storage, and food and living space for insects, amphibians, fungi, plants (including conifer regeneration in the Coastal Zone), birds, and mammals.
 9. Assessment of the impact to amphibians and fish from forest chemical use in forested wetlands;
 10. Develop and apply wind-firm buffer standards.
- The following changes to the existing forest practices rules are necessary in order to truly protect listed species and should be used to develop an additional alternative:
 - Provide larger no-cut stream buffers (preferably FEMAT buffers); the provision to allow logging within riparian buffers up to 30% of the basal area needs to have a time constraint to prevent cumulative reduction of the original standing volume.
 - Prevent the unnatural delivery of overland flows and sediment delivery into streams due to soil disturbance from roads and harvest
 - Provide logging buffers on all streams, not just the large ones
 - More effectively protect unstable slopes from logging
 - Limit cumulative effects of multiple logging operations planned in brief time frames within the same watershed (particularly to reduce sedimentation and effects on flows)
 - Provide for restoration of the most degraded watersheds
 - Provide better protection of the most intact watersheds (refugia).
 - Better protect waterways, particularly small streams, from chemical applications
 - Fully consider the impacts of roads and require prompt road closures where appropriate and prevent road construction in areas where aquatic species would be impacted by them; institute road maintenance reviews on a regular basis

- Aim for the full recovery and protection of the species covered in the plan, not just an improvement over past rules and practices.
- The HCP should include oversight measures to oversee the implementation of the Plan's conservation measures and landowner compliance.
- Most importantly, provide a fully funded, independent, scientific monitoring and adaptive management program.
- Key elements of the FFR were dropped from the rules adopted by the Forest Practices Board. These include:
 - substantial exemptions from various riparian zone protections, protections for seeps and springs, protections for alluvial fans, and other requirements for forest properties under 80 acres;
 - less strenuous limits on salvage logging in various riparian zones;
 - new exemptions from the "stand requirements" for hardwood conversion;
 - reduced basal area retention requirements for riparian inner zones in mixed conifer forest types on the Eastside;
 - potentially weaker retention requirements in outer zones for high elevation forests in the Eastside;
 - the loss of language recognizing the importance of addressing road densities;
 - the loss of language recognizing the need to better address bull trout and hydrology issues; and
 - the loss of language pertaining to the landscape planning process.
- Most commenters favored application for an HCP rather than 4(d) rule exemption. Some also noted that, although the preferred alternative should be an HCP-based application for an ITP, it is important for the EIS to analyze an alternative that adopts and implements the forest practices rules consistent with FFR through a 4(d) rule.
- Another alternative would be broader take relief for upland land use activities. The Services could adopt 4(d) rules that prohibit incidental take of fish and other aquatic species only where caused by activities directly in or over waters occupied by the species in question (or perhaps also in a limited riparian area, e.g., within 50 ft. of the ordinary high water mark). This would focus attention on situations where there is a reasonable probability of proving that a particular land use activity is in fact the proximate and foreseeable cause of harm to ESA-listed aquatic species. Such a narrowly targeted take prohibition would be more credible and effective than the current approach of considering virtually any land activities to be potentially unlawful based on attenuated causation theories never successfully used in ESA prosecutions.
- Another alternative or group of alternatives would be narrower take relief for forest practices in Washington. These alternatives would involve providing assurances for some but not all forest practices that are subject to the Washington Forest Practices Program.
- Consider an alternative in which timber harvest criteria are based on existing conditions in each watershed instead of a blanket prescription applied widely.

- Alternatives that should be analyzed are: 1) the Forests and Fish Rules; 2) the Forests and Fish Report; and 3) a Forest and Fish Report – Plus alternative. This latter alternative would include:
 - Practices which support recovery of the covered species.
 - Better conservation standards in general for streams east of the Cascades
 - No-cut buffers on all streams
 - Larger buffers on fish-bearing streams
 - Reduced logging in buffer areas
 - More substantive protection for unstable slopes
 - Greater protection from chemical applications – especially for small streams and from cumulative effects of multiple chemical applications
 - Measurable biological goals and related habitat standards for all streams subject to the assurances
 - Protection of existing high quality habitats
 - Independent scientific review of the designation of fish-bearing streams currently used under the Rules; they should include potential fish habitat;
 - Applicability to all forestland owners – no exemptions for small forest properties and no operations “grandfathered in” under past regulations
 - A fully funded and scientifically-based monitoring program tied to the biological goals and related habitat standards;
 - A fully funded and scientifically-based adaptive management program; there can be no adaptive management if regulations are locked into place for 50 years under the HCP;
 - Adequate analysis of cumulative effects and adjustment of activities on a watershed and site-specific basis should occur so that a high probability of recovery can be expected throughout the species range;
 - NMFS currently must consult with Washington on their recently released draft water quality standards package;
 - Restoration should be assured in any HCP in addition to merely limiting impacts that might cause a take.
 - Address and preclude the withdrawal of lands from participation in the plan over time – i.e., conversion.
 - Limit “no surprises.”
 - Correct the undue complexity and ambiguity of some of the FFRs components.
- ESA take relief also should be provided for situations where compliance with forest practices rules relating to water quality and aquatic species has additional public benefits for providing habitat for ESA-listed wildlife species (e.g., spotted owl, marbled murrelet). The EIS should analyze alternatives available for the Services to address this problem. For example, a landowner providing improved habitat for aquatic species can suffer large, unintended economic penalties if that habitat also becomes occupied by ESA-listed wildlife species because of its enhancement.

4.0 Issues to be Analyzed in the EIS

This section will be a statement of the issues that will be used directly in Chapter 1. It is to be completed following internal scoping, giving consideration to the scoping comments summarized in Section 3.2 (Summary of Issue and EIS Content Comments).

5.0 Alternatives Considered for the EIS

This section is to be completed following internal scoping, giving consideration to the alternatives identified in Section 3.3 (Summary of Comments on Alternatives). It is intended to include both the alternatives considered but not analyzed in detail and the alternatives to be analyzed in detail.

5.1 Alternatives Considered, but not to be Analyzed in Detail

5.2 Alternatives to be Analyzed in Detail

APPENDIX A

Notice of Intent to Prepare a Draft EIS

**Published in the Federal Register
on Monday, March 17, 2003**

BILLING CODES 3510-22-S, 4310-55-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[I.D.022003D]

Notice of Intent to Prepare a Draft Environmental Impact Statement for Federal Actions Under the Endangered Species Act Related to the State of Washington Forest Practices Rules

AGENCIES: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

U.S. Fish and Wildlife Service (FWS), Department of the Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Notice is hereby given pursuant to the National Environmental Policy Act, as amended (NEPA), that NOAA Fisheries and FWS (known hereafter as the Services) intend to gather information necessary to prepare a Draft Environmental Impact Statement (DEIS) related to anticipated applications from the State of Washington (State) for take authorization or a take limit under the Endangered Species Act of 1973, as amended (ESA).

Washington State has entered into discussions with the Services in anticipation of submitting an application for take authorization pursuant to the ESA (see Background Section for specific sections) for the Washington State Forest Practices Rules, regulating forest management activities on non-Federal forest lands in the state of Washington..

Both Services have listed threatened and endangered species in the State that are likely to be affected by this action.

The species are identified below in SUPPLEMENTARY INFORMATION and in the "Covered Resources" section of Appendix A and Schedule H-1 of the Forests and Fish Report, April 1999, available at

<http://www.wa.gov/dnr/htdocs/forestpractices/rules/forestsandfish> or by calling one of the contacts listed below in

ADDRESSES.

The Services are providing this notice: (1) to advise other agencies and the public of their intent to prepare a DEIS on the State application(s); and (2) to obtain suggestions and information on the scope of issues to include in the DEIS.

DATES: Written scoping comments for the DEIS from all interested parties must be received at the appropriate address or fax number (see ADDRESSES) no later than 5 p.m. Pacific time on [insert date 30 days after date of publication in the FEDERAL REGISTER]. Interested parties may contact the Services for more information at the addresses and phone numbers listed below. Four public scoping workshops will be held in 2003. Each meeting will begin with a one-hour open house to accommodate informal discussion and questions; the presentation portion of the meeting will begin at 6 p.m. The meeting dates and times are:

1. March 18, 2003, 5 - 8 p.m., Tacoma, WA.
2. March 20, 2003, 5 - 8 p.m., Port Angeles, WA.
3. March 25, 2003, 5 - 8 p.m., Spokane, WA.
4. March 26, 2003, 5 - 8 p.m., Ellensburg, WA.

ADDRESSES: Written comments and requests for information should be sent to Craig Hansen, U.S. Fish and Wildlife Service, 510 Desmond Drive, S.E., Suite 102, Lacey, WA 98503-1273, telephone (360)753-6046, facsimile (360)753-9518; or Steve Keller, NOAA Fisheries, 510 Desmond Drive, S.E., Suite 103, Lacey, WA 98503-1273, telephone (360)534-9309, facsimile (360)753-9517. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above addresses.

The meeting locations are:

1. Tacoma, Tacoma Sheraton Hotel, 1328 Broadway Plaza, Tacoma, WA.
2. Port Angeles, Red Lion Hotel, 221 North Lincoln, Port Angeles, WA.
3. Spokane, Red Lion Hotel at the Park, 303 W. North River Drive, Spokane, WA.
4. Ellensburg, Grupe Center at Central Washington University, 400 East 8th Avenue, Ellensburg, WA.

FOR FURTHER INFORMATION CONTACT: Steve Keller, (360) 534 - 9309.

SUPPLEMENTARY INFORMATION:

Species Listed in this Notice

NMFS listed species potentially addressed in this action include Ozette Lake sockeye salmon (*Oncorhynchus nerka*), Snake River sockeye salmon (*O. nerka*), Puget Sound chinook salmon (*O. tshawytscha*), Lower Columbia River chinook salmon (*O. tshawytscha*), Upper Columbia River spring-run chinook salmon (*O. tshawytscha*), Snake River spring/summer chinook salmon (*O. tshawytscha*), Snake River fall chinook salmon (*O. tshawytscha*) Lower

Columbia River steelhead ([O. mykiss](#)), Middle Columbia River steelhead ([O. mykiss](#)), Upper Columbia River steelhead ([O. mykiss](#)); Snake River steelhead ([O. mykiss](#)), Columbia River chum salmon ([O. keta](#)), and Hood Canal summer-run chum salmon ([O. keta](#)).

Refer to the following website for NMFS listing status and protective regulations:

<http://www.nwr.noaa.gov/1salmon/salmesa/index/htm>

FWS listed species potentially addressed in this action include bull trout ([Salvelinus confluentus](#)) and any or all unlisted Washington native fish and six stream breeding amphibians.

Background

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The Services expect to take action on ESA section 10(a)(1)(B) and/or 4(d) Limit submittals expected from the State. Therefore the Services are seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Section 9 of the ESA and implementing regulations prohibit the “taking” of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). Harm is defined by the FWS to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50CFR17.3). NOAA Fisheries’ definition of harm includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727, November 8, 1999).

The Services may promulgate rules under section 4(d) of the ESA establishing specific take prohibitions for threatened species that the Services determine to be consistent with the conservation needs of threatened species. Section 10(a)(1)(B) of the ESA provides a mechanism by which both Services may permit take through the issuance of an Incidental Take Permit (ITP). An ITP may be issued for take that could occur incidental to otherwise lawful activities, provided all permit issuance criteria are met, including the requirement that permit issuance would not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The applicant for an ITP

must prepare and submit to the Services for approval, a Habitat Conservation Plan (HCP) containing strategies for minimizing and mitigating the impacts of take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure adequate funding will be provided for the HCP. An HCP and associated ITP could cover the threatened bull trout and salmon, plus any endangered and unlisted species that might be affected by the Washington State Forest Practices Rules. In addition, the “No Surprises” rule assures that the Services will not require the commitment of any additional land, water or financial compensation for HCPs that are being properly implemented throughout the term of the HCP and ITP. It is important to note that section 10 is the only ESA mechanism by which take authorization can be granted to non-Federal landowners for take of endangered species.

On July 10, 2000, NOAA Fisheries promulgated and published an ESA section 4(d) rule for threatened salmon and steelhead(65 FR 42422). In addition to establishing take prohibitions, the rule provides that certain specified activities or conservation plans may qualify for a limit from the rule’s take prohibitions provided that such activities or programs qualify for one of 13 categories known as “limits”. Limit 13 of this rule applies to forest management in Washington and specifically relates to non-Federal forest management activities that are at least as protective as the elements of the Forests and Fish Report. The Forests and Fish Report is a document that makes recommendations for improving forest management and timber harvest for the benefit of salmon and aquatic and riparian species. The report was prepared collaboratively by a group of stakeholders from private industry, public interest groups, State and Federal Government agencies, and Tribes. NOAA Fisheries has not yet determined whether the State’s Forest Practices Rules as revised by the Forests and Fish report comply with this rule.

FWS has not issued a comparable 4(d) rule, but is considering whether to exempt the take of bull trout that may occur through implementation of the Washington State Forest Practices Rules by adopting a 4(d) rule. A FWS 4(d) rule could be structured to exempt take that might occur as a result of implementing the State regulatory program, provided that the program is consistent with the conservation needs of the species. However, a 4(d) rule can only address take of species listed as threatened. The Forests and Fish Report addresses some endangered and unlisted species, as well as threatened species.

Because both threatened and endangered species are likely to be affected and because there are alternative methods for meeting the requirements of the ESA, the State is working with both Services to develop one or more proposals.

State of Washington’s Programs and Proposals

The Washington State Forest Practices Board was established in 1975 by the Washington State Legislature under the State Forest Practices Act. By law, the board is charged with establishing rules governing forest management activities on non-Federal forest land in the State in order to protect public resources while maintaining a viable timber industry. Those rules, as embodied in the Washington Administrative Code (Title 222 WAC), specifically consider the effects of various forest practices on fish, wildlife and water quality. The Forest Practices Act also requires the Washington Department of Natural Resources to administer and enforce all board-adopted rules on non-Federal forest land. The board adopts Forest Practices rules pertaining to water quality protection after reaching agreement with the director of the Department of Ecology (Ecology) or the director's designee on the board.

Beginning in late 1996, stakeholders determined additional protections should be developed because of the imminent listing of several salmon species in Washington under the Act, and because new information from watershed analyses and other sources indicated riparian protections in place at that time were not adequate for public resource protection. In response, the participants in a stakeholder negotiation process known as Timber, Fish, and Wildlife (TFW) began working on riparian issues and agreed to negotiate collaboratively in an effort to submit a proposal to the Forest Practices Board. Over the course of the negotiations, representatives from Federal agencies and Washington counties joined the effort, and representatives of environmental interests and some Tribes withdrew from the process. The remaining caucuses continued negotiating and went on to write the Forests and Fish Report (April 1999), which ultimately became the basis for new Forest Practices Rules with increased attention to the needs of salmon and other aquatic and riparian species on forest lands. The groups contributing to the development of the report included Federal agencies (FWS, NOAA Fisheries and Environmental Protection Agency), state agencies (Washington Departments of Natural Resources, Governor's Office, Fish and Wildlife, and Ecology), the Tribes, the Washington State Association of Counties, the Washington Forest Protection Association, and the Washington Farm Forestry Association.

Following publication of the Forests and Fish Report, the Washington State Legislature directed the Forest Practices Board to adopt rules consistent with the Forest and Fish Report. The board conducted an evaluation of the proposal, and alternatives to the proposal, for modifying the Forest Practices Rules. This evaluation included a State Environmental Impact Statement (SEIS), under the Washington State Environmental Policy Act. The State's Final

SEIS, entitled “Alternatives for Forest Practices Rules for Aquatic and Riparian Resources” was published in April 2001.

In consideration of this evaluation, the Forest Practices Board adopted new rules in May 2001, which were based on the Forests and Fish Report. Effective July 2001, these new rules cover a wide variety of forest practices and include a new, more functional classification of rivers and streams on non-Federal forest land; improved plans for properly designing, maintaining, and upgrading existing and new forest roads; additional protections for unstable slopes; greater protections for riparian areas intended to maintain properly functioning conditions; a process for adaptive management; and other features.

Washington State has now entered into discussions with the Service’s in anticipation of submitting an application for ESA take authorization pursuant to Section 10(a)(1)(B) of the Act, a 4(d) Limit or both for the Washington State Forest Practices Rules, regulating forest management activities on non-Federal forest lands in the state of Washington.

Review Under National Environmental Policy Act

The Services will conduct an environmental review of the application package(s) to be submitted by the State and prepare a Federal DEIS. The DEIS will analyze the proposal, as well as a full range of reasonable alternatives and the associated impacts of each. The Services are in the process of developing alternatives for analysis. Alternatives currently under consideration include: a No Action alternative; an alternative resulting in the issuance of a Section 10 Permit based on an HCP, which includes the full complement of practices endorsed by the Forests and Fish Report; an alternative resulting in NOAA Fisheries determining that the State Forest Practices Rules and non-regulatory elements of the State’s program are at least as protective of threatened fish as the Forests and Fish Report, thus qualifying the program under Limit 13 of the July, 2000 4(d) rule; an alternative that includes the adoption of a similar 4(d) rule by the FWS; and alternatives involving an ESA incidental take permit or 4(d) rules associated with measures that are either more or less protective than the complete Forests and Fish Report package. Additional alternatives may be developed based on input received from this and future public comment opportunities during the development of the DEIS.

Comments and suggestions are invited from all interested parties to ensure the full range of alternatives related to this proposed action and all significant issues are identified. The Services request that comments be as specific as possible. Comments should include information, issues, and concerns regarding: the direct, indirect, and

cumulative effects that implementation of the proposal could have on endangered and threatened species or their habitats; other possible alternatives; potential adaptive management and/or monitoring provisions; funding issues; baseline environmental conditions; other plans or projects that might be relevant to this project; and minimization and mitigation measures. In addition to considering impacts to threatened and endangered species and their habitats, the DEIS will analyze the effects the alternatives would cause to other components of the human environment. As a result comments specific to the following are also requested: air quality; water quality and quantity; geology and soils; cultural resources; social resources; economic resources; and environmental justice.

This notice is provided pursuant to NEPA regulations (40 CFR 1506.6). Comments or questions should be directed to the Services at the addresses or telephone numbers provided above. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public.

This environmental review by the Services will be conducted in accordance with the requirements of the NEPA, NEPA Regulations (40 CFR 1500-1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations.

Dated:

Anne Badgley

Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon

Dated:

Barbara Schroeder , Acting Chief, Endangered Species Division,
Office of Protected Resources, National Marine Fisheries Service

APPENDIX B

Press Release Announcing Scoping Workshops

News Releas e



U.S. Fish & Wildlife Service

Department of the Interior
U.S. Fish & Wildlife Service
Western Washington Office
510 Desmond Dr., SE
Suite 102
Lacey, WA 98503-1263

For Release: March 10, 2003

Contact: Craig Hansen, U.S. Fish and Wildlife Service, (360) 753-6046
Steve Keller, National Marine Fisheries Service, (360) 534-9309

Federal Agencies Schedule Meetings related to Forest Practices and Endangered Species Act

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services) have scheduled meetings in Ellensburg, Spokane, Tacoma, and Port Angeles to encourage public comment on the development of a National Environmental Policy Act Environmental Impact Statement (NEPA EIS) for Federal actions under the Endangered Species Act (ESA) related to the Washington State Forest Practices Rules. The March meetings are part of a 30-day scoping period to explain the NEPA EIS process and to invite comments and suggestions to ensure the full range of alternatives related to the anticipated request are identified. The comment period is expected to begin around March 14, 2003 and close 30 days later.

The EIS will be part of the review process involving an expected request by the Washington Department of Natural Resources (DNR) for a limit on take prohibitions and/or incidental take authorization under the ESA. If the Services approve the expected proposal, some forest practice activities affecting aquatic species on non-federal forestlands would be exempted from certain ESA-related take prohibitions. The ESA defines take as meaning to harass, harm, pursue, hunt, shoot, wound, kill, trap,

capture, or collect, or to attempt to engage in such conduct. It also includes prohibitions against significant habitat modification or degradation which result in the death or injury of a protected species by significantly impairing essential behavioral patterns, including breeding, feeding, sheltering, spawning, or migrating.

Under the ESA, non-federal entities may submit a plan and request ESA coverage to take Federally protected species while conducting otherwise lawful activities. In exchange, the applicant agrees to protect elements of healthy ecosystems important to species covered in the plan. In this case that would include protection of areas important to salmon, bull trout, amphibians, and other aquatic species. New State Forest Practices Rules adopted in 2001 were based on the Forests and Fish Report prepared collaboratively by representatives from private industry, public interest groups, state and Federal agencies, and tribes.

The meetings will be held from 5:00 to 8:00 p.m. and will begin with a one-hour open house for informal discussion and questions, followed by a presentation at 6:00 p.m. Meeting dates and locations are:

March 18, 2003 Tacoma Sheraton Hotel, 1320 Broadway Plaza,
Tacoma, Washington

March 20, 2003 Red Lion Hotel, 221 North Lincoln, Port
Angeles, Washington

March 25, 2003 Red Lion at the Park, 303 West North River
Drive, Spokane, Washington

March 26, 2003 Central Washington U., Grupe Center, 400 East
8th Avenue, Ellensburg, Washington.

Anyone interested in commenting on the scope of the EIS is not required to attend the public meetings but may find

the format helpful in developing their comments. Comments should be as specific as possible and can be mailed or faxed at any time during the comment period to:

Craig Hansen, FWS
510 Desmond Drive SE, Suite 102

Lacey, WA 98503-1273
Telephone (360)753-6046

Fax (360)753-9518

Steve Keller, NMFS
510 Desmond
Drive SE, Suite 103

Lacey, WA 98503-1273
Telephone

(360)534-9309

Fax (360)753-
9517

Please note that, to ensure accuracy, the Services cannot accept comments by e-mail.

The National Marine Fisheries Service (NOAA Fisheries) is the principal steward of the nation's living marine resources. It protects marine and anadromous species under the Endangered Species Act (ESA) and Marine Mammal Protection Act. An Agency of the Commerce Department, NOAA Fisheries also regulates the nation's commercial and recreational fisheries. It manages species under the Magnuson-Stevens Fishery Conservation Act (MSFCA) throughout federal waters, which extend 200 miles from the coastline. NOAA Fisheries, Northwest Region (NWR), administers programs off the coast of Oregon and Washington, and in the vast inland watershed habitats of Pacific salmon and steelhead in those two states and Idaho. The region's principal responsibility is implementing the Endangered Species Act for 25 populations of listed salmonids, covering more than 40 percent of the land base of three states. It also manages the West Coast groundfish fishery, a complex comprising more than 80 species.

The Washington Habitat Branch (WHB) of the NOAA Fisheries NWR Habitat Conservation Division based in Lacey, Washington has the responsibility of managing NOAA Fisheries authorities on most habitat related activities within the boundaries of Washington state, including marine and freshwater habitats. The Branch office conducts conservation planning, recovery planning and consultations with Federal agencies under the ESA and MSFCA primarily regarding anadromous salmonids.

There are two field offices of the WHB, one located in Ellensburg, WA and the other within the NWR Seattle office at Sand Point.

The U.S. Fish and Wildlife Service is the principal federal agency responsible for conserving, protecting and enhancing fish, wildlife and plants and their habitats for the continuing benefit of the American people. The Service manages the 95-million-acre National Wildlife Refuge System, which encompasses 540 national wildlife refuges, thousands of small wetlands and other special management areas. It also operates 69 national fish hatcheries, 64 fishery resource offices and 81 ecological services field stations. The agency enforces federal wildlife laws, administers the Endangered Species Act, manages migratory bird populations, restores nationally significant fisheries, conserves and restores wildlife habitat such as wetlands, and helps foreign governments with their conservation efforts. It also oversees the Federal Aid program that distributes hundreds of millions of dollars in excise taxes on fishing and hunting equipment to state fish and wildlife agencies.

The Western Washington Fish and Wildlife Office of the FWS is based in Lacey, Washington and addresses Federal fish and wildlife issues from the crest of the Cascades to the Pacific Ocean, and from the Canadian border to the Columbia River. The Office is responsible for the listing, recovery and consultation on species protected under the Endangered Species Act; the development of Conservation Plans; implementation of the FWS portion of the Northwest Forest Plan within the range of the Northern Spotted Owl in Washington; issues involving migratory birds and other species protected by Federal laws; environmental contaminants assessment and spill response; fish and wildlife habitat restoration; review of proposed Federal projects, including Clean Water Act activities, and technical assistance on fishery resource issues. The Western Washington Fish and Wildlife Office is the lead FWS point of contact for issues with Statewide implications.

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APPENDIX C

Scoping Materials and Other Information Available at the Scoping Meetings

Included in this appendix are:

- a copy of the Comment Form available at the scoping meetings
- a copy of the Public Meeting Handout available at the scoping meetings
- a copy of the PowerPoint presentation given at the scoping meetings

In addition, copies of the following materials were available to be picked up by the public at the meetings, but copies are not included in this appendix:

- Final Environmental Impact Statement on Alternatives for Forest Practices Rules for Aquatic and Riparian Resources. April 2001. Prepared by Washington Forest Practices Board under the State Environmental Protection Act.
- New Proposed Forest Practices Rules Small Business Economic Impact Statement. January 2001. Prepared by Washington Forest Practices Board.
- New Proposed Forest Practices Rules Cost Benefit Analysis. February 2001. Prepared by Washington Forest Practices Board.
- Packets containing the current Forest Practices Board Rules (Title 222 WAC), the Forest Practices Board Manual, and Chapters 76.09, 76.13, and 77.85 RCW.
- A Citizen's Guide to the 4(d) Rule for Threatened Salmon and Steelhead on the West Coast. June 2000. National Marine Fisheries Service.

APPENDIX D

Attendees at Scoping Meetings

**List of Attendees* at Tacoma Meeting
March 18, 2003**

Name	Representing	City
Peter Goldman	Washington Forest Law Center	Seattle, WA
Mary Scurlock	Pacific Rivers Council	Portland, OR
Nick Kirkmire	NJK Associates	Olympia, WA
Sherry Fox	WFFA	Ethel, WA
Joel & Yvonne Kupberg	N/A	Vashon, WA
Ann Goos	WFPA	Seattle, WA
Charles McTee	WFPA	Eatonville, WA
Jaquelin McTee	WFPA	Eatonville, WA
Sam Pauw	Weyerhaeuser Company	Federal Way, WA
Court Stanley	Port Blakely Tree Farm	Tumwater, WA
Jack Barbash	Vashon Island Forest Practices Committee	Vashon, WA
Scott Swanson	West Fork Timber Company	Lakewood, WA
Danial Hall	American Lands	Portland, OR
Lynn Ferguson	Seattle Audubon	Seattle, WA
Toby Thaler	Washington Forest Law Center	Seattle, WA
Peggy Britton	League of Women Voters	Seattle, WA
Lloyd Moody	Governor's Salmon Office	Olympia, WA
D. Eric Harlow	Washington Forest Law Center	Seattle, WA
Tom Robinson	WSAC	Olympia, WA
Jim McCauley	The Campbell Group	Portland, OR
David Jennings	Gifford Pinchot Task Force	unknown
Alex Morgan	Seattle Audubon	Seattle, WA
Flora Leisenring	League of Women Voters	Seattle, WA
Becky Kelley	Washington Environmental Council	Seattle, WA
Dawn Pucci	Suquamish Tribe	unknown
Bart Madison	Trout Unlimited – Washington Council	Tacoma, WA
Bruce Beckett	Weyerhaeuser Company	Olympia, WA
Angela Emery	Washington Forest Law Center	Seattle, WA

* Includes only those who signed in.

**List of Attendees* at Port Angeles Meeting
March 20, 2003**

Name	Representing	City
Bob Dick	American Forest Resource Council	Olympia, WA
Mark Hannah	Economic Development Council	Port Angeles, WA
Carol Johnson	North Olympic Timber Action Committee	Port Angeles, WA
John A. Holmberg	N/A	Bremerton, WA
Randy Johnson	Green Crow Corporation	Port Angeles, WA
Harry Bell	Green Crow Corporation	Port Angeles, WA
Tim Podlesny	N/A	Port Angeles, WA
Jill Silver	Hoh Tribe	unknown
Joseph F. Murray	Merrill & Ring	Clallam Bay, WA
Patti Case	Simpson Resource Company	Shelton, WA
Andy Ritchie	Makah Tribe	Neah Bay, WA

* Includes only those who signed in.

**List of Attendees* at Spokane Meeting
March 25, 2003**

Name	Representing	City
Earl Christensen	N/A	Spangle, WA
Jim O'Donnell	N/A	Newman Lake, WA
Michelle Eames	USFWS	Spokane, WA
Shelly Short	U.S. Representative Nethercutt	Colville, WA
Hal Meenach	N/A	Valleyford, WA
Maurice Williamson	WFFA	Colville, WA
Steve Tyeit	Boise Cascade	Kettle Falls, WA
Maria Rannege	Boise Cascade	Kettle Falls, WA
Sheilah Kennedy	Okanogan County Noxious Weed Board	Okanogan, WA
Dwight Opp	Stimson Lumber Company	Newport, WA
Scott Gray	Stimson Lumber Company	Portland, OR
Lin "Pete" Peterson	Upper Columbia United Tribes	Spokane, WA
Scott Erickson	Upper Columbia United Tribes	Nespelem, WA
Patti Playfair	Rafter Seven Ranch	Chewelah, WA
Connie Playfair Cromquist	Rafter Seven Ranch	Chewelah, WA
Bob Playfair	Rafter Seven Ranch	Chewelah, WA
Doug Smith	Stimson Lumber Company	Newport, WA
Mike Petersen	The Lands Council	Spokane, WA
Michael Spencer	N/A	Raymond, WA
Hal Rowe	Kettle Range Conservation Group	Spokane, WA

* Includes only those who signed in.

**List of Attendees* at Ellensburg Meeting
March 26, 2003**

Name	Representing	City
Carol Yetter	N/A	Oroville, WA
Nick Abellera	N/A	Oroville, WA
Jon Soest	NCWashington Audubon	Leavenworth, WA
Jane Revesz	N/A	Battle Ground, WA
Peter T. Revesz	N/A	Battle Ground, WA
Alan Bibby	Longview Fibre Co.	Leavenworth, WA
Maria Bieker	Boise Cascade	Ellensburg, WA
Pat Hamilton	Pacific County Commissioner	South Bend, WA
Mike Poulson	Washington Farm Bureau	Connell, WA

* Includes only those who signed in.

APPENDIX E

Scoping Meetings Notes

SCOPING MEETING NOTES

**HELD FROM 5 P.M. TO 8 P.M. ON MARCH 18, 2003
AT THE SHERATON HOTEL - TACOMA, WA**

EIS on Take Coverage for the Washington Forest Practices Rules Pertaining to Aquatic Species

To be Prepared by:

**U.S. Dept. of Commerce, National Marine Fisheries Service (NMFS)
and U.S. Dept. of the Interior, Fish and Wildlife Service (FWS) (the Services)**

The meeting was initiated with a 1-hour open house, in which people examined maps and other documents and discussed the project with representatives from the Services, the Washington Department of Natural Resources (DNR), and TetraTech FW. The open house was attended by approximately 30 people and lasted from 5 p.m. to 6 p.m.

Steve Keller (NMFS) opened the formal part of the meeting with welcomes and housekeeping items at 6 p.m. He started going through the PowerPoint presentation (attached). Steve covered the description of the Endangered Species Act (ESA) and covered relevant definitions. Then Darin Cramer (DNR) gave a description of the Washington Forest Practices Rules and Washington State's interest in receiving federal assurances associated with the ESA. Mathew Harrington (NMFS) then gave an overview of the National Environmental Policy Act (NEPA) process and how it relates to this project.

After the presentation, Mathew Harrington moderated a formal comment session in which speakers were given a microphone, asked to identify themselves, and presented their comments. The following section is a summary of the comments presented:

Bart Madison (Weyerhaeuser)

Bart asked why we can't take comments by email. Mathew Harrington answered that it was the policy of the Services because of the difficulty with identifying the source of the comments.

Jack Barbash (Vashon Forest Practices Committee)

- The current understanding of the best available science requires that Alt. 3 (from the SEPA EIS) is the most appropriate. Alt. 3 minimizes the impact on sediment, temperature, peak flow, riparian and wetland habitat.
- Best available science says we don't know the effects of management over the long term; therefore, it is unwise to lock in a decision for 50 years. If you have to have this long of a term, then you should pick a more protective alternative.
- The problem with Alternative 2 is that the Environmental Organizations were not part of its development.

Mary Scurlock (Pacific Rivers Council-Portland)

- The scope of action is unprecedented, in terms of the size of the area and the number of species covered; therefore, it is extremely important.

- There is a high need to document the decision very well in the EIS; we should quantify the take and state how take will be assessed.
- We are talking about 55 species, so will need more analysis than what has been done to date.
- We should look at alternatives that don't lock the Plan in for as long as 50 years.
- They are concerned about the fact that the process (4(d) vs HCP) has not yet been defined.

Scott Swanson (Murray Pacific – West Fork)

- They have been implementing an HCP for 10 years and they recommend issuance of an HCP.
- Need to assess how the rules will protect sediment, hydrology, riparian, water quality, fish, wildlife, cumulative effects, and fire.
- Alternatives recommended include:
 1. HCP-based on the F&F Report, Forest Practices Rules, and the Forest Practices Act.
 2. 4(d) Rule
 3. No Action
 4. HCP or 4(d) Rule with greater restrictions

Peter Goldman (Director - Washington Forest Law Center)

First he wanted to clear up the judge's ruling on their 4(d) rule case; the Court said it wasn't ripe for decision yet.

There are two basic issues – Impacts and Alternatives

- Main Shortcomings of the F&F Report - most important are that the buffers are too small, small streams are not protected, and steep slopes are not adequately protected. They will provide written comments on this.
- Adaptive Management Program – they have major issues with this because there is no guarantee of future funding. DNR estimated \$34 million required; in 2002, program received on \$3-4 million from state and federal sources. Need to consider the long-term effects if it does not receive full funding over the long term. Need to analyze how effective the existing Adaptive Management Program is – it has inadequate monitoring, no commitment to adjust policy based on findings, too much veto power, and vague definitions of viability, etc. The EIS should consider a more neutral Adaptive Management Program.
- Conflicts between the Manual and the Rule – need to consider these. Sometimes the Manual undoes what the Rule intended (e.g., the Channel Migration Zone). There needs to be a mechanism for the Federal biologists to be involved in approving the Manual.
- Fish/Presence Absence – the F&F program uses a model, which is unscientific or not being implemented.
- Compliance & Effectiveness Monitoring – the Services should consider what happens if the State doesn't have the finances to do it.
- Cumulative Effects – F&F does not provide sufficient protection; EIS should evaluate how effectively F&F covers cumulative effects.
- Upland Wildlife – need to consider effects on upland wildlife.
- Alternatives
 - one alternative should be based on the ManTech Report (or consider FEMAT).
 - DNR HCP riparian restrictions could be a valid alternative.

David Jennings (Gifford Pinchot Task Force)

- F&F Plan is not based on best available science; Federal agencies should not issue an ITP to a politically based Plan.
- F&F Report ignores cumulative effects
- F&F Report ignores the hydrologic maturity question.

- F&F Report ignores protection of Type 5 streams.
- F&F Report provides no good way of documenting compliance on the ground.
- They believe that under the current rules, the currently Threatened species will become Endangered over several years.
- We have HCPs in this State that are causing detrimental effects on spotted owls and yet can't change them because they are stuck for 50 years.

Becky Kelley (Washington Environmental Council)

- Critical Questions are: What degree of certainty does F&F provide for the survival and recovery of Washington's native fish and stream-breeding amphibians? What degree of certainty is appropriate for the Services to issue a Take Permit? The DEIS needs to present accurate information that presents tradeoffs.
- They believe the FFR as currently described in the rules, should not receive a long-term permit or No Surprises guarantee.
- Need an alternative more protective than F&F.
- Need alternative that lasts for less than 50 years and one that does not include the No Surprises guarantee.
- Equally important to the agreement is monitoring, adaptive management, funding, etc.
- Stream typing model – new reports coming out this summer that should be incorporated.
- State is relieving small forest landowners of some road fixes
- The impact of these provisions need to be analyzed in the EIS.
- EIS needs to look at the current baseline condition of riparian habitat etc. and how quickly and to what extent the alternatives will restore that habitat.

Jim McCauley (The Campbell Group-lands in WA,OR,& CA)

- He is concerned about the timeline; we are relying on a 6-month period (1st half of 2005) to complete 3 steps – make sure this can be met so it won't be late (past June 2005).
- Need to analyze sediment, hydrology, etc.
- Alternatives
 - No Action – option under F&F with no 4(d) or HCP
 - Alternative with greater restrictions
 - Alternative with F&F granting an HCP or 4(d) – this should be the preferred

Ann Goos (Washington Forest Protection Association)

Two Issues:

- Need a true No Action – if don't get Federal Assurances on entire program, what would happen to other funding sources, etc
- Adaptive Management – much funding is coming also from private sources

Daniel Hall (American Lands Alliance)

- F&F Report was an important step forward, but there are holes in F&F; need for buffers and all streams, steep slopes, cumulative effects, application of chemicals, and full funding for adaptive management and monitoring.
- Needs to be a full range of alternatives within the HCP scenario
- Need to better address Adaptive Management – including No Surprises – Alt. With limited assurances
- Also, could have Alternative that has term of 5-10 years instead of 50.
- No Action – need to look hard at it; it will require Services to enforce Take
- In the EIS we

- Need to compare against species recovery, not just to the No Action
- Need to consider full effects and benefits of more protective alternatives
- Need to consider effects on a watershed-specific basis
- Also need to consider the benefits to covered species of more restrictive alternatives.

Eric Harlow (Washington Forest Law Center)

- Cumulative Effects – with the Watershed Analysis program not being implemented, cumulative effects are not being adequately addressed. Need to consider this in the EIS.
- Adaptive Management – focus programs research to determine if F&F rules are effective in the 1st place. Also, Rule Tools are not being developed. Is it functional with its current structure? Concerns with the CMER program – it is volunteer-based – too much overhead needs to be expended.
- Quantifying Take – important to quantify with modeling or quantitative risk assessment.
- Alternatives – 1) use best available science as the basis for one alternative 2) other alternatives with different levels of assurance and different terms

Court Stanley (Port Blakely Tree Farm)

- The F&F rules represent a good program for the health of the environment.
- The preferred alternative should be the current Forest Practices Rules based on the FFR.

Toby Thaler (Washington Forest Law Center)

- The main purpose of the ESA is conservation. Conversion does not produce conservation. How can the effects of the alternatives on conversion be considered?
- Also need to consider refugia.
- Important to address the relationship between the new regulatory HCP and the existing proprietary HCPs. What happens if landowners like the new HCP better than the existing ones.
- Data from the State can be used to analyze conversion
 - GMA forest land designation – will land be more or less likely to be conserved?
 - State Tax Records
 - Provision for riparian easements – perhaps can authorize funding.

Angela Emery (Washington Forest Law Center)

- Adaptive management is the most important part of the Plan. Need to use objective science in the adaptive management process, including peer review science. Could establish an independent science committee that reviews products of adaptive management.

Dawn Pucci (Suquamish Tribe)

- CMER does have peer review. She is glad to see Peter and Toby showing up to the meetings. It is mostly volunteer, but Geoff McNaughton is paid Adaptive Management Administrator.
- Funding comes from State, Feds, Private and Tribes.

Joel Kupeberg (Owners of a Micro-forest)

- He has studied ecology for more than 50 years and knows that anyone who thinks 50 years is ok for a permit is crazy; it's not possible to tie things up that long and expect things to be ok. Do not grant a permit for that long.

Flora Leisenring (League of Women Voters)

- Wants to emphasize concern over the adequacy of the FFR. Particularly concerned about adaptive management.
- Also concerned about cumulative effects.

This was the end of the scoping comment session. Mathew Harrington then moderated a question and answer period as follows:

Q – What will the HCP cover; the State, the landowners, or both?

A – Both.

Q – How does this process relate to the Clean Water Act assurances?

A – Do not know specifically. DNR is working with EPA and Ecology. It is apparently the intent of Ecology to use this NEPA to cover the water quality issues for the State.

Q – To what extent are the substantive provisions of the FFR Rules open for change?

A – Steve Keller said it would be premature to answer that question other than to state that the EIS process is intended to facilitate full analysis of the issues and provide information to the decision-makers about the environmental aspects of different alternatives that could lead to changes in the protection strategy.

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Q – Under 4(d) rule, what happens to endangered species.

A – Endangered species are not addressed in the 4(d) rule. Take is prohibited.

Q – This was a statement by Ann Goos: The adaptive management programd does envision change. Therefore, a 50-year Plan is not locked in. There will be change, based on science. Quite a bit of science has already gone into the Plan.

Q – Has a decision been made regarding whether a permit will be issued?

A – No; no decision has been made regarding this.

SCOPING MEETING

**HELD FROM 5 P.M. TO 8 P.M. ON MARCH 20, 2003
AT THE RED LION HOTEL – PORT ANGELES, WA**

EIS on Take Coverage for the Washington Forest Practices Rules Pertaining to Aquatic Species

To be Prepared by:

**U.S. Dept. of Commerce, National Marine Fisheries Service (NMFS)
and U.S. Dept. of the Interior, Fish and Wildlife Service (FWS) (the Services)**

The meeting was initiated with a 1-hour open house, in which people examined maps and other documents and discussed the project with representatives from the Services, the Washington Department of Natural Resources (DNR), and TetraTech FW. The open house was attended by approximately 10 people and lasted from 5 p.m. to 6 p.m.

Doug Zimmer (FWS) opened the formal part of the meeting with welcomes and housekeeping items at 6 p.m. He started going through the PowerPoint presentation. He turned it over to Steve Keller who covered the description of the Endangered Species Act (ESA) and covered relevant definitions. Then Darin Cramer (DNR) gave a description of the Washington Forest Practices Rules and Washington State's interest in receiving federal assurances associated with the ESA. Steve Keller then gave an overview of the National Environmental Policy Act (NEPA) process and how it relates to this project.

After the presentation, Doug Zimmer moderated a formal comment session in which speakers were given a microphone, asked to identify themselves, and presented their questions and/or comments. The following section is a summary of the questions and comments presented:

Randy Johnson

How will the requirements of the Clean Water Act (CWA) be met? It sounds like this is a 2-track process. Answer: There is no clear pathway for EPA assurances. We will continue to work the issue. The Services have an MOA with EPA that may provide a link between the ESA and the CWA.

Bob Dick (American Forest Resource Council)

There needs to be documentation and an explanation of what is going to happen with the CWA process, including the connection of the CWA to this process and how each is going to be addressed.

John Holmberg

You have said that we are not going to scope the CWA, but what are we scoping? Answer: We are fundamentally scoping the environmental impacts of the issuance of an ITP under Section 10 and/or a letter of approval of Limit 13 under Section 4(d) of the ESA for the State Forest Practices program.

Bob Dick (American Forest Resource Council)

We currently have a set of forest practices regulations that have been set by the forests and fish process. We are hoping that the feds will sign off that these requirements are enough to provide protection under ESA so that as long as the landowners are in compliance with the rules they will not be liable under the CWA or ESA. However, what happens in the interim? So there is no assurance that in the interim that if they follow the rules that they are not going to be in compliance with the CWA and the ESA. There are no assurances until the government takes the action.

Joe Murray

- It says clearly on the forest practices application form that there are no assurances that the rules comply with federal laws and that it is the landowners responsibility to comply with all the laws.
- How much of what we are doing toward assurances is truly based on protection of the environment and how much is process driven? There is a lot of process involved that may not be germane to protecting the environment. How much of it is process for the sake of process and how much is for the good of the environment?

Harry Bell

What is the “biological opinion” (BO) based on and what does it do? Does it become part of the final EIS? Answer: The BO is prepared to analyze the effects of the HCP and/or 4(d) Limit 13 application on species covered under an HCP or letter of approval. It is not part of the EIS per se, but it must be done and must reach a “no jeopardy” conclusion before the Findings and Record of Decision are completed and before the ITP or 4(d) letter of approval is issued.

Bob Dick (American Forest Resource Council)

Is this going to approve the list of fish of wildlife or is it going to approve a process?

Answer: First, a list of species will be decided on (possibly all native fish and 7 amphibians) and then the covered activities are decided on.

Mark Hannah (Economic Development Council)

If I was a private landowner and I was following the FFR rules and there were still some impacts that would affect the ESA. How will those impacts be addressed? There is no way you are going to know if a certain activity is going to have certain impacts over the next 50 years until it happens. There isn't a perfect science today and if we follow what we think is right at this time but then 50 years from now we discover that there are impacts, then will the landowner be held liable?

Answer: In an HCP or 4(d) rule, you can have some impact or incidental take, but species should improve. Also, there is a substantial adaptive management program. If an ITP or letter of approval (4(d) is issued, and the landowner is complying with a legally issued Forest Practices permit, the landowner would not be liable for take of a covered species.

Joe Murray

You said in the presentation that under an HCP you would have target levels of fish and wildlife. How can you hold the landowner responsible for the number of fish that will return when there are many other issues outside the landowner's control that impact the number of fish returning. How can you tell what the impacts of the FFR rules are? Or the impacts of the HCP?

Answer: Habitat parameters would be used for monitoring the effectiveness of the HCP or 4(d) plan and changes to the plan could be made as a result of the adaptive management process provided for in the rules.

Carol Johnson (North Olympic Timber Action Committee)

- You have the 4 alternatives. Who makes the final decision about which alternative you choose?

Answer: In NMFS, the ITP and or the 4(d) letter of approval is signed by the Regional Administrator in Seattle.

- Also, are economic impacts part of the process?

Answer: Yes.

Bob Dick (American Forest Resource Council)

I think you need a section titled unintended consequences. I think we all can agree that we would prefer to see the land remain in forest production than to see the lands converted to nonforest uses. Many landowners are saying that the rules are so strict that they are getting out of the business. Need to analyze the affect of these rules in the urban interface and also need to look at the incentives to try to keep landowners in forestry.

Jill Silver

- What is the economic impact to the Olympic Peninsula. There is an economic benefit to providing adequate protection of species to avoid the future listing of species. She gave the example of the economic impacts of the owl and murrelet listings. Wants to see the economic impacts analyzed.
- The functions of the landscape should be maintained, but the rules don't support these protections. An example of this is forested wetlands. The rules say that forested wetlands provide many functions. However, the rules then allow harvest in forested wetlands without assessments of what functions these wetlands provide to the ecosystem. So this is one example of the disjuncts between the intent of the FFR and the rules.
- The rules are not ready for inclusion in an HCP until the rules are re-written to represent the intent of the FFR. For example, bankfull width. Using ordinary high water height, you could put buffers on headwater wetlands. But with the rules you can no longer do that with the bankfull width. Only can buffer adjacent wetlands. Headwater streams aren't protected- cited Jeff Cederholm's research on headwater streams. While these streams are very restrictive to landowners, we would argue that these rules were developed without sufficient scientific support to be protective of the environment. These rules need to be re-written to fully use the science available.
- The adaptive management program is too slow. There are concerns about how well the adaptive management is working. DNR is just now starting to do monitoring. There are too many gaps between the intent of the FFR and what we thought was being agreed to.
- Desired future conditions targets, which were developed by placeholder metrics- not science, do not allow for sufficient buffers. Should not use Douglas fir in the Hoh – use Sitka spruce, which grows very fast so the streams don't get adequate buffers.

Joe Murray

The Services should do an overlay of older forest practices of previous years with those being done today and see what the impacts are.

Harry Bell

Are there candidate species in the pipeline that may be covered? They may not be listed in the forests and fish report but they may be covered.

Answer: Probably will at least include the current Candidate species - coastal cutthroat, coastal coho, and possibly southwest Washington coho. NMFS is also doing a review of 23 ESUs because of the Alsea decision in Oregon.

Mark Hannah

If you take a chinook salmon that goes up the Elwah and one that goes up the Columbia, one that goes up the Hoh, etc., are these considered to be the same species?

Answer by Steve Keller: We will answer this question in the EIS. Evolutionarily Significant Units are distinct between major drainages (e.g Puget Sound, Coastal, Columbia River) but it is more difficult to distinguish stocks from different watersheds within ESUs.

Andy Ritchie (Makah Tribe)

- Several tribes share concerns about the way that some elements of the FFR have been interpreted into the rules.
- The Makah's have concerns about DFC, perennial initiation points, and channel migration zones. They want to see CMZs addressed the way they were intended in the agreement.
- I have additional concerns regarding the impacts of the volume of these activities-falling into the category of cumulative impacts. How are cumulative effects going to be addressed? Cumulative economic effects, cumulative effects of multiple entries, cumulative effects of forest practices. These concerns relate especially to road densities, rotation periods, and densities of clearcuts.

Bob Dicks (American Forest Resource Council)

At the FP Board meeting yesterday (March 19), there was a rejection of a motion to create a new rule regarding cumulative effects. I would suggest that you take a look at the notes of that meeting.

SCOPING MEETING NOTES

**HELD FROM 5 P.M. TO 8 P.M. ON MARCH 25, 2003
AT THE RED LION HOTEL - SPOKANE, WA**

EIS on Take Coverage for the Washington Forest Practices Rules Pertaining to Aquatic Species

To be Prepared by:

**U.S. Dept. of Commerce, National Marine Fisheries Service (NMFS)
and U.S. Dept. of the Interior, Fish and Wildlife Service (FWS) (the Services)**

The meeting was initiated with a 1-hour open house, during which people examined maps and other documents and discussed the project with representatives from the Services (Jon Hale, Steve Keller, Sally Butts, Doug Zimmer), the Washington Department of Natural Resources (DNR) (Darin Cramer, Kim Sellers, Carol Walters, and Julie Chemel), and Tetra Tech FW (Alan Olson). The open house was attended by approximately 20 people and lasted from 5 p.m. to 6 p.m.

Doug Zimmer (FWS) opened the formal meeting and acted as moderator. He described the purpose of the meetings and the process that would be followed. He recognized a number of organizations that were represented at the meeting. Darin Cramer (DNR), Steve Keller (NMFS), and Jon Hale (FWS) presented a PowerPoint presentation that included information about FFR, ESA, and the NEPA process.

D. Zimmer clarified that the official comment period closes on April 16, but comments would be accepted through the 17th due to errors in some of the information sheets. He then asked the participants if there were any questions about the presentation. The following were asked:

Steve Tveit (Boise Timber Company)

Inquired how the No-Action alternative was defined for this EIS and how it is different from the proposed action. D. Zimmer explained it was the current conditions. J. Hale added that the No-Action alternative is needed under NEPA for something to compare the action alternatives against. D. Cramer commented that it is possible that the legislature could revert to earlier FPRs if Federal Assurances were not provided.

Maurice Williamson (Washington Farm Forestry Association)

Asked about the closing date for receiving scoping comments. He commented that on many similar projects the Services were not lenient about the closing date for comments. S. Keller responded that the Services were being flexible because of the error in some of the information releases. However, the Services do want to keep the process moving forward.

Pete Peterson (Upper Columbia United Tribes)

Inquired if other agencies, in particular tribal agencies, will have opportunities outside of normal public comment periods to review and comment on the HCP and EIS documents. He was referred to talk with D. Cramer or S. Keller separately. It was indicated that government-to-government consultations with affected tribes would occur.

Jim O'Donnell (Private Landowner)

Inquired about what was meant by an evolutionarily distinct species and where this could be found in the ESA. How does genetics play a role? S. Keller and D. Zimmer indicated that ESA can protect “significant portions” or populations of species. The Services have each developed criteria for when a population becomes significant. Criteria may include morphological, behavioral, and genetic traits. Listing based upon ESUs and DPSs allows more management flexibility in terms of listing as candidate, endangered, or threatened.

O'Donnell also asked about what was meant by potentially listed species. S. Keller explained that the number of species covered under an HCP depends on the desires of the applicant. Coverage of unlisted species can avoid amendments to an HCP if a species eventually becomes listed. DNR has included a number of unlisted species under the F&F Report that are expected to be covered under an HCP if an HCP is the selected pathway.

S. Tveit

Wanted the benefits of an HCP explained and asked how often the Services have enforced take prohibitions against entities. S. Keller explained that he did not have information about enforcement of take prohibitions, but indicated the risk is present without a 4(d) rule or Section 10 permit. It was also explained that an HCP reduces the regulatory uncertainty for both the regulators and the regulated community. An HCP also relieves entities from the risk of 3rd party civil suits related to covered species.

The following are Scoping Comments from participants:

Mike Peterson (The Lands Council)

He indicated he had a problem with a 50-year time period for an HCP and suggested a shorter 10-year span might be more appropriate. He was concerned that environmental changes might occur over a longer time period that would not be addressed. S. Keller pointed out that “changed circumstances” clauses are generally included in HCPs and provide for “if/then” scenarios. HCPs also generally have adaptive management components that allow for changes to commitments if needed.

M. Peterson also commented that monitoring is often the last thing that is generally done and that there is usually not enough funding for monitoring. He asked when does the baseline start and suggested the comparison should be to pristine conditions. S. Keller indicated baseline is current conditions, not past conditions. He also indicated that the Biological Opinion includes terms and conditions for implementing items such as monitoring.

Hal Meenach (Family tree farmer)

Stated concern that DNR is both a tree farmer and the regulating entity. He commented that rules often remove the most productive lands near streams and thinks he should receive compensation for these losses. He also commented that he provides a product that the public needs. He noted there are also natural environmental changes in riparian buffers that need consideration. Noted that we cannot go back to pristine conditions. Suggested that some unused habitat should be made available to bull trout. He noted that introduced species also affect population viability. He was also concerned that inflexible rules do not always have the same effect in different places (one size doesn't fit all) and that conditions are too diverse for simple rules. Property rights are important.

M. Williamson

Suggested that social and economic impacts need to be considered in the EIS. Economics should be analyzed in light of past circumstances, changes since the SEPA EIS, and world economics that affect local markets.

M. Peterson

Public values also need to be considered in the EIS, including non-market costs of adding, for example, sediment to streams and other environmental effects. Recommended that some people at the UW were looking at some of this.

J. O'Donnell

Indicated he was not satisfied how small landowners are defined. Suggested that separate rules are needed for small landowners that address their needs and abilities relative to conservation measures. They have less land and less money available to implement rules. The management goals of a small landowner are often different than for a large landowner. For example, a small landowner may want to increase ruffed grouse habitat, which is younger successional forest, but is constrained by how much land is available to implement that goal. Also, it is a big problem that some of the best land near streams is unavailable due to riparian buffers.

D. Zimmer offered that there might be unintended consequences and cumulative effects of the rules that need to be documented in the EIS.

S. Tveit

Reiterated that the baseline needs to be carefully considered and that historic disturbance regimes (e.g. fire cycles) need to be included. Habitat conditions are not static and species evolved under changing conditions. Rules may not reflect changing conditions.

M. Peterson

Noted that under SAGE (part of CMER) disturbance regimes are being investigated as part of the Adaptive Management program of FFR.

Sheilah Kennedy (Okanogan County Noxious Weed Board)

Need to consider noxious weeds in the EIS. In reference to pesticides, the goal of zero drift is not realistic. It is more appropriate to have minimal drift as a goal.

M. Williamson

In addition to disturbance regimes, Alternative Plans need to be considered in the EIS. Analyses should not necessarily be worst-case. Effects to small landowners need to be considered in the EIS as part of the whole package of effects and should not be analyzed separately.

Bob Playfair (Rafter Seven Ranch)

In terms of the Alternative Plans process, these are site-specific approaches. Small landowners tend to be micro-managers because they work with a small landbase. No management buffers are not necessarily better than proper management of buffers. Some riparian areas are overstocked. Eastside and Westside forests (including riparian areas) require different levels of management. He also noted the need to recoup funds spent on management actions such as riparian restoration.

M. Peterson

No management is a misnomer. For example, fire suppression in riparian buffers is a management action. There is a need for restoration activities in some riparian areas, but it is important to maintain canopy cover. Fire disturbances generally removed brush, grasses, and

small trees but retained canopy cover. It is also important to recognize that structures built in riparian zones will continue to need some management to protect the structures.

Dwight Opp (Simpson Timber)

Recommended that the Purpose and Need of the EIS needs to remain focused on providing Federal Assurances to private timber operators in Washington and keeping with the project schedule. He preferred the HCP alternative.

Shelly Short (US Representative Nethercutt)

Suggested that there should be coordination with counties and other local governments, in particular with reference to growth management and economics.

H. Opp

There needs to be better communication between and within state agencies.

J. O'Donnell

Suggested that science isn't perfect and things we believe are true sometimes turn out to be false (provided Forest Plan assumptions about thermal cover for elk). Need to incorporate new/update information as appropriate. Brought up point about disparity of forest practices rules in Idaho and Washington.

SCOPING MEETING NOTES

**HELD FROM 5 P.M. TO 8 P.M. ON MARCH 26, 2003
AT CENTRAL WASHINGTON UNIV. GRUPE CENTER - ELLENSBURG, WA**

EIS on Take Coverage for the Washington Forest Practices Rules Pertaining to Aquatic Species

To be Prepared by:

**U.S. Dept. of Commerce, National Marine Fisheries Service (NMFS)
and U.S. Dept. of the Interior, Fish and Wildlife Service (FWS) (the Services)**

The meeting was initiated with a 1-hour open house, during which people examined maps and other documents and discussed the project with representatives from the Services (Jon Hale, Steve Keller, Sally Butts, Doug Zimmer), the Washington Department of Natural Resources (DNR) (Darin Cramer, Kim Sellers, Carol Walters, and Julie Chemel), and Tetra Tech FW (Alan Olson). The open house was attended by approximately 10 people and lasted from 5 p.m. to 6 p.m. Following the open house a PowerPoint presentation was made that explained the FFR rules, the ESA and the NEPA process. Finally, comments and questions were taken from the public participating in the meeting.

Doug Zimmer (FWS) moderated the meeting. Darin Cramer (DNR), Steve Keller (NMFS), and Jon Hale (FWS) were speakers during the PowerPoint presentation.

The following are comments from public participants:

Pat Hamilton (Pacific County Commissioner) –

- Concern was expressed that there was insufficient notification of public meetings and none were located in the southwest portion of the state.
- Concern was expressed that small landowners bear a disproportionate amount of the costs for ESA protections under the FFR.
- Concern was expressed that FFR was not science-based, rather it was negotiated and small landowners did not have adequate voice in the negotiations.
- Concern was expressed that under the FFR many people will lose a significant portion of their harvestable landbase in riparian buffers without any compensation.
- Under the DNR HCP, state lands lost money.
- Recommends that an Economic Impact Statement be completed for the project that addresses effects to private property.
- Suggested that many landowners will turn to developing (converting) their lands rather than maintain it as productive forest.

Mike Poulson (Forest Farm Association) –

- Inquired if “assurances” meant protection from 3rd party lawsuits if a FPA was granted. Indicated that even one lawsuit can drive small landowners out of business. The Services responded that it would protect them from prosecution for take by the Services. The Services also indicated that it was believed that it would provide some protection from 3rd party lawsuits related to ESA, but was not sure if it provided complete protection. The Services indicated they would investigate this issue with agency attorneys.

- Concern was expressed that there was not adequate public notification of the public scoping meetings and there were not enough meetings located in affected areas of the state.
- Suggested that the EIS should meet the Flexibility Act
- Suggested that the EIS should meet the Data Quality Act.
- Suggested that the EIS should avoid using too many acronyms.

Peter Revesz (Self /Tree farmer) –

- Commented that he thought more information about the project would be provided.
- Asked what the project would mean for individuals. What are the benefits for individuals, DNR, the Services, etc? Should individuals get an HCP?
- Commented that this seemed like an EIS about the SEPA EIS already completed.
- Commented that FFR didn't always reflect the needs of small landowners.
- Asked what information would be used in the evaluation of the application for federal assurances, how that information would be used, and what criteria would be used in the evaluation.
- Asked what the review process would consist of.
- Suggested that the burden for protecting listed species is unfair and that urban areas seem to get a better deal than timber operators.
- Asked for an explanation of the criteria for listing a species.
- Indicated that he preferred having flexibility in managing his lands, that the HCP and the FFR limit this flexibility. He suggested this is sometimes detrimental for owners who are trying to be good land stewards.
- S. Keller provided information on Issuance Criteria for an ITP. Indicated that the cumulative effects analysis would place effects of forest practices in perspective with other activities that affect listed species. Pointed out there were other limits under the 4(d) rule for hatchery practices, roads, etc. J. Hale noted that many resource areas such as soils, water quality, social, economic, etc. would be addressed in the EIS. It was suggested that private landowners could get an individual HCP, but the current project is designed to obtain coverage for all forest landowners.

Carol Yetter (Self) –

- Inquired where people could go for information. D. Cramer reiterated the DNR web site.
- Indicated RMAPs were an economic issue that needs to be addressed in the HCP/4(d) process. Many small landowners can't afford to implement them. Pointed out this was a flaw in the previous small landowner economic analysis. What is the cost/benefit of RMAPs to the small landowner? Need to consider the social effects of RMAPs on small landowners? S. Keller pointed out that these issues were being looked at by the legislature.
- Suggested that the FFR utilized too broad a brush that was detrimental to small landowners.

M. Poulson –

- The analysis needs to consider not only the overall economic cost/benefits, but also indicate who would be winners and losers.

Jane Revesz (Self/Tree farmer) –

- The FFR is too hard on small landowners. Can't get an FPA without an RMAP. Many people can't afford culvert replacements.

- Inclusion of non-listed species could result in more expanded mitigation requirements.
- The FPRs are too complicated. A consultant is needed to implement them, which reduces the economic benefits.
- Small landowners were inadequately addressed in the SEPA EIS.
- Cost of existing RMAP and riparian rules to small landowners may result in converting land use rather than forest practices, which would result in even more loss of wildlife habitat.
- Need to include information from the RTI project.

Nick Abellera (Self\Washington State Grange) –

- Where would the HCP apply? Everywhere or just certain places. S. Keller responded that the project is for all places the FPRs apply except some places already having HCPs.
- Asked what would happen to landowners who could not afford to comply to the rules?
- Suggested that loss of use and value under FPRs equated to a property taking and that landowners should be compensated.
- 50 percent compensation for riparian easements is inadequate.
- Why are riparian rules different for orchards?
- Need to clearly define in the EIS what is meant by a “road”.

Jon Soest (North Central Washington Audubon Society)

- Understands the concerns of the small landowners
- A cumulative effects analysis is needed in the EIS
- Urbanization is an issue that needs to be considered in the cumulative effects analysis.
- Watershed planning processes (both NWPPC and WRIA) need to be integrated with this process.
- Roads need to be addressed. These are costly.
- Science. The Adaptive Management Program needs monitoring to respond to changes.
- Needed compliance monitoring is not done well right now.
- Enforcement implemented fairly is essential.

Marla Bieker (Boise Cascade) –

- The following resource areas need to be addressed in the EIS: sediment, hydrology (peak flow), riparian habitat, large woody debris, water quality (pesticides, temperature, shade), fish habitat and passage, wildlife, cumulative effects, fire management.
- Need to adhere to the schedule set by the legislature.

Alan Bibby (Longview Fiber) –

- Agreed with all the suggestions made by Marla.
- Recommended that the four alternatives mentioned in the information packet be covered in the EIS.

P. Revesz –

- Reiterated points made earlier about what information would be used in the evaluation, how it will be used, and what criteria would be used in the evaluation. S. Keller described the general process, but explained the analysis methodology had not been developed. Indicated that criteria would be what is needed to provide properly functioning conditions.
- Mr. Revesz asked if fish survival would be monitored? S. Keller indicated that as part of the Adaptive Management Program, CMER is conducting effectiveness monitoring.

N. Abellera –

- Suggested that flexibility is needed for special situations. S. Keller noted that Alternative Plans can be developed.

APPENDIX F

List of Respondents to the Scoping Package (includes written comments only)

	<u># Pages of Comment*</u>
USDI National Park Service	3 pp
American Lands Alliance	79 pp
Concerned Friends of Ferry County – Curlew, WA	2 pp
Kettle Range Conservation Group	4 pp
Northwest Ecosystem Alliance	13 pp
Pacific Rivers Council	19 pp
Pilchuck Audubon Society	2 pp
The Lands Council	4 pp
The League of Women Voters of Washington	2 pp
Washington Environmental Council (2 submittals)	13 pp
Columbia River Inter-Tribal Fish Commission	11 pp
Confederated Tribes and Bands of the Yakama Nation	6 pp
Hoh Indian Tribe	9 pp
Jamestown S' Klallam Tribe	3 pp
Suquamish Tribe	2 pp
Stillaguamish Tribe – Natural Resources Department	1 p.
Tulalip Tribes of Washington – Submitted by Morisset et al.	2 pp
Boise Building Solutions – Goldendale, WA	1 p.
Boise Building Solutions – Ellensburg, WA	1 p.
North Olympic Timber Action Committee	1 p.
Simpson Resource Company – Shelton, WA	2 pp
Washington Forest Protection Association	41 pp
West Fork Timber Company, LLC	2 pp
Weyerhaeuser Company – Federal Way, WA	8 pp
Ferry County Natural Resources Board	2 pp
Okanogan County Noxious Weed Control Board	1 p.
Dr. Jack Barbash – Vashon, WA	1 p.
Dan Boeholt – Aberdeen, WA	1 p.
Edwin Johnson – Port Angeles, WA	1 p.
Jane and Peter Revesz – Battle Ground, WA	2 pp
<u>Jon Soest – Leavenworth, WA</u>	<u>2 pp</u>
TOTAL	240 pp

* Does not include pages of attachments